Lampson	Pickering	Souder
Largent	Pickett	Spence
Lewis (KY)	Pitts	Stenholm
Lucas (KY)	Pombo	Strickland
Lucas (OK)	Rahall	Stump
McCrery	Riley	Sununu
McIntosh	Rogers	Talent
McIntyre	Ryun (KS)	Tanner
Moran (KS)	Sandlin	Taylor (NC)
Murtha	Sanford	Thornberry
Myrick	Sessions	Thune
Ney	Shadegg	Tiahrt
Norwood	Sherwood	Toomey
Oberstar	Shimkus	Turner
Ortiz	Shows	Vitter
Paul	Shuster	Wamp
Pease	Sisisky	Watkins
Peterson (MN)	Skelton	Watts (OK)
Peterson (PA)	Smith (MI)	Whitfield
Phelps	Smith (TX)	Wicker

NOT VOTING—11

Cannon	Hall (OH)	Rangel
Coble	Holden	Royce
Cox	Istook	Scarborough
Engel	Jefferson	

□ 1137

Messrs. BURTON of Indiana, NEY, DELAY, SHOWS, WHITFIELD, ADERHOLT, STRICKLAND, LARGENT, and KINGSTON changed their vote from ''yea'' to ''nay.''

Mr. RADANOVICH changed his vote from ''nay'' to ''yea.''

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated against:

Mr. YOUNG of Alaska. Mr. Speaker, I mistakenly voted in favor of the motion to instruct conferees on H.R. 1501 offered by Ms. LOFGREN. My vote should have been recorded as a vote in opposition to the motion.

GENERAL LEAVE

Mr. GOODLATTE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous material on H.R. 1875, the bill to be considered in the Committee on the Whole shortly.

The SPEAKER pro tempore (Mr. HEFLEY). Is there objection to the request of the gentleman from Virginia?

There was no objection.

INTERSTATE CLASS ACTION JURISDICTION ACT OF 1999

The SPEAKER pro tempore (Mr. EWING). Pursuant to House Resolution 295 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 1875.

The Chair designates the gentleman from Utah (Mr. HANSEN) as chairman of the Committee of the Whole, and requests the gentleman from Colorado (Mr. HEFLEY) to assume the chair temporarily.

□ 1138

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1875) to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, with Mr. HEFLEY (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Virginia (Mr. GOODLATTE) and the gentleman from Michigan (Mr. CONYERS) each will control 30 minutes.

The Chair recognizes the gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this much-needed bipartisan legislation corrects a serious flaw in our Federal jurisdiction statutes. At present, those statutes forbid our Federal courts from hearing most interstate class actions, the lawsuits that involve more money and touch more Americans than virtually any other litigation pending in our legal system.

Mr. Chairman, the class action device is a necessary and important part of our legal system. It promotes efficiency by allowing plaintiffs with similar claims to adjudicate their cases in one proceeding. It also allows claims to be heard in cases where there are small harms to a large number of people, which would go otherwise unaddressed because the cost to the individuals suing could far exceed the benefit to the individual. However, class actions have been used with an increasing frequency and in ways that do not promote the interests they were intended to serve.

In recent years, State courts have been flooded with class actions. As a result of the adoption of different class action certification standards in the various States, the same class might be certifiable in one State and not another or certifiable in State court but not in Federal court. This creates the potential for abuse of the class action device, particularly when the class involves parties from multiple States or requires the application of the laws of many States.

For example, some State courts routinely certify classes before the defendant is even served with a complaint and given a chance to defend. Other State courts employ very lax class certification criteria rendering virtually any controversy subject to class action treatment.

There are instances where a State court, in order to certify a class, has determined that the law of that State applies to all claims, including those of purported class members who live in other jurisdictions. This has the effect of making the law of that State applicable nationwide.

The existence of State courts which broadly apply class certification rules encourages plaintiffs to forum shop for the court which is most likely to certify a purported class. In addition to forum shopping, parties frequently exploit major loopholes in the Federal jurisdiction statutes to block the removal of class actions that belong in Federal court.

For example, plaintiffs' counsel may name parties that are not really relevant to the class claims in an effort to destroy diversity. In other cases, counsel may waive Federal law claims or shave the amount of damages claimed to ensure that the action will remain in State court.

Another problem created by the ability of State courts to certify class actions which adjudicate the right of citizens of many States is that oftentimes more than one case involving the same class is certified at the same time. In the Federal court system, these cases involving common questions of fact may be transferred to one district for coordinated or consolidated pretrial proceedings.

When these class actions are pending in State courts, however, there is no corresponding mechanism for consolidating the competing suits. Instead, a settlement or judgment in any of the cases make the other class actions moot. This creates an incentive for each class counsel to obtain a quick settlement of the case and an opportunity for the defendant to play the various class counsel against each other and drive the settlement value down. The loser in this system is the class member whose claim is extinguished by the settlement at the expense of counsel seeking to be the one entitled to recovery of fees.

Our bill is designed to prevent these abuses by allowing large interstate class action cases to be heard in Federal court. It would expand the statutory diversity jurisdiction of the Federal courts to allow class action cases involving minimal diversity. That is when any plaintiff and any defendant are citizens of different States to be brought in or removed to Federal court.

Article 3 of the Constitution empowers Congress to establish Federal jurisdiction over diversity cases, cases between citizens of different States. The grant of Federal diversity jurisdiction was premised on concerns that State courts might discriminate against out-of-state defendants.

In a class action, only the citizenship of the named plaintiff is considered for determining diversity, which means that Federal diversity jurisdiction will not exist if the named plaintiff is a citizen of the same State as the defendant regardless of the citizenship of the rest of the class.

□ 1145

Congress also imposes a monetary threshold, now $75,000, for Federal diversity claims. However the amount in controversy requirement is satisfied in a class action only if all of the class members are seeking damages in excess of the minimum required by the statute.

These jurisdictional statutes were originally enacted years ago, well before the modern class action arose, and they now lead to perverse results. For example, under current law a citizen of one State may bring in Federal court a simple $75,001 slip-and-fall claim against a party from another State. However, if a class of 25 million product owners, each having a claim of $10,000 living in all 50 States, brings claims collectively worth $250 billion against the manufacturer, the lawsuit cannot be heard in Federal court.

This result is certainly not what the framers had in mind when they established Federal diversity jurisdiction. Our bill offers a solution by making it easier for plaintiff class members and defendants to remove class actions to Federal court where cases involving multiple State laws are more appropriately heard. Under our bill, if a removed class action is found not to meet the requirements for proceeding on a class basis, the Federal court would dismiss the action without prejudice, and the action could be refiled in the State court.

This legislation does not limit the ability of anyone to file a class action lawsuit. It does not change anybody's rights to recovery. Our bill specifically provides that it will not alter the substantive law governing any claims as to which jurisdiction is conferred. Our legislation merely closes the loophole allowing Federal courts to hear big lawsuits involving truly interstate issues while ensuring that purely local controversies remain in State courts. That is exactly what the framers of the Constitution had in mind when they established Federal diversity jurisdiction.

I urge each of my colleagues to support this very important bipartisan legislation.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is a measure, H.R. 1875, that will remove class actions involving State law issues from State courts, the forum most convenient for victims of wrongdoing to litigate and most familiar with the substantive law involved, to the Federal courts where the class is less likely to be certified and the case will take longer to resolve.

Now why is this being done in the face of all the arguments for States rights, the concern about the Tenth Amendment to the Constitution that reminds us that all powers not explicitly delegated to the Federal system is reserved to the States? Why are we here with a bill that would now take this power from the State courts and subject it to Federal rule?

Although this bill is described by its proponents as a simple procedural fix, in actuality it rewrites a major rewrite of the class action rules that would bar most forms of State class actions. That is right; it would bar most forms of State class actions. H.R. 1875 is appropriately opposed by the Department of Justice, both the State and Federal courts, by consumer interest groups, and public interest groups as well.

Now class action procedures offer a valuable mechanism for aggregating small claims that otherwise might not warrant individual litigation. This legislation will undercut that important principle by making it far more burdensome, expensive and time consuming for injured persons to obtain access to justice in the State courts.

In doing so, it will make it more difficult to protect our citizens against violations of consumer health, safety and environmental laws, to name but a few important ones. Thus, the bill will benefit only one class of litigants, corporate wrongdoers. The most obvious examples of corporate defendants that have been susceptible to State class actions are, as we know, tobacco, gun, and managed care industries.

H.R. 1875 will also damage both the Federal and State courts. As a result of Congress' increasing propensity to federalize State crimes and the Senate, the United States Senate's, unwillingness to confirm judges, the Federal courts are already facing a dangerous work-load crisis. By forcing resource-intensive class actions into Federal court, H.R. 1875 will effectively further aggravate those problems and cause victims to wait in line even longer, as much as 3 years or more, to obtain trial. Moreover, to the extent class actions are remanded to State court, the legislation effectively only permits case-by-case adjudications, potentially draining away precious State court resources as well.

Now finally, the legislation raises constitutional issues because H.R. 1875 does not merely operate to preempt an area of State law, which is onerous enough, but rather it unilaterally strips the State courts of their ability to use class actions' procedural device to resolve State law disputes. The courts have previously indicated that efforts by the Congress to dictate such State court procedures implicate important Tenth Amendment issues and should be avoided. These powers that are not explicitly granted the Federal system are reserved to the States, and we are taking this very important judicial tool away from the States.

So H.R. 1875's incursion into State court prerogatives is no less dangerous to the public than many of the radical forms of tort reform that were rejected of court stripping that was rejected by both the Congress and the administration, and thus I urge that H.R. 1875, Interstate Class Action Jurisdiction Act of 1995, likewise be rejected.

Mr. Chairman, I reserve the balance of my time.

Mr. GOODLATTE. Mr. Chairman, I yield 5 minutes to the gentleman from Virginia (Mr. BOUCHER), one of the lead cosponsors of this legislation, a member of the Committee on the Judiciary and my friend.

Mr. BOUCHER. Mr. Chairman, I rise today in strong support of H.R. 1875, which I am pleased to be co-authoring with my friend and Virginia colleague, the gentleman from Roanoke (Mr. GOODLATTE). Our measure makes a much needed reform in an area that has been subjected to substantial abuse.

Increasingly, lawsuits that are truly national in scope are being filed as State class actions, and a range of problems attends this growing practice. Some State judges employ an almost anything-goes approach that renders virtually any controversy subject to certification as a State class action.

Some State courts routinely engage in a practice that is best described as drive-by class certifications in which the decision to certify the class is made before the defendant is even served with the complaint and given an opportunity to contest the class certification. In such an environment, defendants and even plaintiffs are being denied the most routine of rights as there is a rush to certify classes and a rush to settle the cases.

For example, in order to prevent removal of cases to Federal courts, the amount that is sued for is sometimes kept artificially below the $75,000 jurisdictional threshold for Federal court actions, and that is done even though in many of these instances the plaintiffs would be entitled to recover more than $75,000. In the same vein, class action complaints in many cases will not raise Federal causes of action that could legitimately be raised; also, for the purpose of denying the defendants the opportunity to remove the cases to Federal court.

These practices are clearly not in the interests of the plaintiffs on whose behalf the class actions have been filed, and neither are the quick settlements that often follow and that yield large fees for the plaintiff's attorneys and negligible returns for the plaintiffs themselves.

Another major problem arises from the inability of States to consolidate class action proceedings that often are filed in more than one State and that involve the same issues of law and fact, that involve the same causes of action, and that involve the same class members on both the plaintiff's side and also the same defendants.

Frequently, these parallel cases proceed in numerous States at the same time to the disadvantage of all parties concerned. This circumstance sometimes leads to competition among the States in order to get the certification first and to achieve the first settlement, whatever the cost of that settlement to the plaintiffs on whose behalf the class action has been filed. In the Federal courts, of course, multidistrict litigation can be consolidated, thereby eliminating and avoiding all of these problems.

The legislation that is before the House today seeks to address these concerns by permitting cases that are truly national in scope to be removed to Federal court even if the traditional diversity requirements are not met. Today, the target defendant is almost always a large out-of-state corporation. To prevent removal under current rules an in-state defendant, such as a retailer or distributor of the product that is the subject of the action against whom recovery is generally not sought, will be joined as a party defendant simply to prevent there being complete diversity and to prevent the removal of the case to Federal court.

Our legislation would permit removal in that instance if the center of gravity of the case is truly national in scope. The legislation is carefully drafted to provide that cases which are local, and we refer to these as interstate cases, will not be entertained in the Federal courts unless the traditional removal rules are met. If the defendant and the majority of the plaintiffs are in-state parties, and if the law of that State will govern disposition of the proceedings, then the Federal judge will be required to remand that case for proceedings in State court.

Some of the opponents of this legislation claim that it essentially federalizes all class actions. That simply is not the case. If the case is local in nature, if the majority of the plaintiffs, if the defendant are residents of the State in which the class action is filed, and if the law of that State would be dispositive of the proceeding, then the Federal judge under this legislation would be required to return that case as a class action to the State courts, and so State class actions can proceed under those arrangements where the cases are, in fact, purely local.

The legislation sensibly improves our legal system without limiting anyone's right to file a class action or to receive recovery; and I am pleased to be joined in co-authoring this measure with the gentleman from Virginia (Mr. GOODLATTE), the gentleman from Virginia (Mr. MORAN), the gentleman from Tennessee (Mr. BRYANT). And this morning I am pleased to strongly urge its adoption by the House.

Mr. CONYERS. Mr. Chairman, I yield myself 1 minute before yielding to the gentleman from Ohio (Mr. KUCINICH) because both the previous speakers supporting the bill have talked about the ability of courts to allow the certifying of class actions before the defendants have had an opportunity to respond, and I would like to point out that not only is this barred by the Constitution, that there is a Supreme Court case on it preventing it; and the two Alabama State court cases have both held that classes may not be certified without notice and full opportunity for defendants to respond, and the class certification criteria must be rigorously applied.

So I just want to lay that chestnut to rest as the debate goes on.

Mr. Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. Mr. Chairman, I thank the gentleman from Michigan (Mr. CONYERS) for yielding this time to me.

□ 1200

Mr. Chairman, I rise in opposition to H.R. 1875, the Interstate Class Action Jurisdiction Act. As someone who has served as a State Senator in Ohio, I am here to confirm that the purpose of State courts should not be diminished. State courts exist to assure the people of the State access to justice, equal protection under the law, right to due process and right to redress for injuries.

Now, I represent the people of the United States through being a Member of this Congress, but I also represent the people of the State of Ohio. The people of my State will not yield their legal rights to H.R. 1875. The fact that a legal issue may have national implications should not and does not mean that the State does not have an abiding interest in the legal architecture which has been set up to provide the people of a State with access to the justice system, and this legislation constitutes an attack on the legal right, not only of the people of the State but of the State itself.

It protects the makers of dangerous products by taking away the rights of consumers to get their day in court. It will give the makers of dangerous products the special right to shop for a court they believe will favor them.

How many other accused can choose the judge that will judge them? We should not give those who make dangerous products advantage over our constituents in that way. It will delay justice for injured consumers. Makers of dangerous products will be able to choose courts that are seriously backlogged. We should not delay justice for injured consumers. It would deprive consumers of the right to have their case heard by State court judges and, as such, represents a manipulation of the jurisdictions and a depriving of people the right of due process at a State level.

I believe that economic rights and the right to justice are interconnected. This law would be an attempt to deconstruct those rights simultaneously and individually. This legislation ought to be defeated, and I urge my colleagues to vote against H.R. 1875.

Mr. GOODLATTE. Mr. Chairman, I yield 5 minutes to the gentleman from Virginia (Mr. MORAN), another of our lead cosponsors on this legislation.

Mr. MORAN of Virginia. Mr. Chairman, I thank my distinguished colleague, the gentleman from Virginia (Mr. GOODLATTE), for yielding me time.

Mr. Chairman, this is good legislation. It is needed legislation. So I rise in strong support of this legislation, because it will correct a statutory anomaly that conflicts with the original intent of the Framers of our Constitution. When the Framers drafted the Constitution, they created so-called diversity jurisdiction to protect parties against bias in State courts and to allow interstate lawsuits to be heard in Federal court. Diversity jurisdiction was codified in statute with individual lawsuits in mind.

Mr. Chairman, I am a strong supporter of the class action device, and I believe that it is an important tool in our legal system to provide justice for injured parties. Class actions improve the efficiency of our legal system and are often the best way to fairly adjudicate claims.

With that said, though, we must also recognize the jurisdictional flaw in our system and the abuses that stem from it. We have a responsibility to ensure that plaintiff's and defendant's rights are both fairly protected.

In 1966, the Advisory Committee on Civil Rules created rule 23 of the Federal Rules of Civil Procedure. It allowed similar claims to be heard together. No one at that time considered the unique nature of class actions and that the diversity jurisdiction statute did not make sense for class actions.

The result of all of this is an historical anomaly that prevents interstate class actions, exactly the type of cases that should be heard in Federal court, from being heard in Federal court where they belong. It was never intended that State court justices in one State should be able to overturn the laws of other States. That does not make sense. It was never intended that that be the case by the Framers of the Constitution.

Under current law, though, most interstate class action lawsuits cannot be heard in Federal court because they do not meet the technical requirements of diversity jurisdiction, or too often due to gaming of the system by plaintiffs' attorneys oftentimes. A plaintiff's attorney will find someone in a State where the defendant is located and as soon as they can do that it goes right into State court. That was not

the original intent of the Framers. A case may be worth billions of dollars but a Federal court cannot hear it if each plaintiff's damages are not at least $75,000. It may involve millions of plaintiff class members across the country, but if there is one named plaintiff from the same State as one defendant then that case cannot be heard in Federal court.

Recently, there was a case in Alabama and the attorney for the plaintiff said if anybody wants to claim more than $75,000 then they have to opt out.

They are gaming the system. If somebody has a claim worth more than that then they should be able to get that claim and not be used as pawns to manipulate class action lawsuits.

Most of the recent class action lawsuits filed in State courts are not single State cases. Plaintiffs' attorneys generally file these as nationwide actions, to create the most leverage to force defendants to settle, and that is what the game is all about, forcing large settlements because they know they have nationwide costly implications.

The result of all of this is that one State or county court judge in a forum hand picked by plaintiff's counsel ends up dictating what the law is for the other 49 States.

I do not want Virginia to have its laws decided by a judge in Texas or California or Illinois or New York. My colleagues should not want a State or county court judge in some other State adjudicating their constituents' rights without any accountability to the people of their own State, but that is what is happening today.

This year in a House Committee on the Judiciary hearing, former Clinton administration Solicitor General, and the famous Duke Law School constitutional scholar Walter Dellinger, described what is going on as false federalism, because instead of having a Federal judge decide for all 50 States, a judge of one State is deciding for the other 49 States.

It does not make sense. This false federalism is made worse by the rampant abuses that have been going on in some State courts and the lax certification standards that those courts apply.

It is not right. It should not continue. We need to change it. It is important to recognize this is not a radical change to our legal system. This is only to correct an anomaly that should have been corrected and that until it is corrected will lead to wide scale abuse that is not acceptable.

I strongly urge support for this contrustive corrective legislation.

Mr. CONYERS. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I would point out to my distinguished friend, the gentleman from Virginia (Mr. MORAN), that the limit was raised from $50,000 to $75,000 for diversity jurisdiction by the Federal court system itself. They were trying to make it a higher level to prevent gaming, not to encourage gaming.

Then I should point out to the gentleman that the Judicial Conference of the United States, the chief justice himself presiding, pointed out that 1875 creates a couple of problems. One is that, in effect, they do not have the ability to deal with increased caseload. And they expressed opposition to these class action provisions and also the conflict between these provisions of the bills and longest recognized principles of federalism, and they encourage further deliberate study of the complicated issues raised.

So although the gentleman thinks this is new material, it has been very carefully considered by the Federal judiciary.

Mr. Chairman, I yield 1 minute to the gentlewoman from Illinois (Ms. SCHAKOWSKY).

Ms. SCHAKOWSKY. Mr. Chairman, I appreciate the gentleman from Michigan (Mr. CONYERS) yielding me the time.

Mr. Chairman, I rise to voice my strong opposition to H.R. 1875. This is a classic example of a solution looking for a problem. Worse, it is an ill-conceived solution that actually creates a problem. Class action suits are not clogging State courts as proponents assert, but H.R. 1875 would virtually assure that Federal courts get clogged.

The real problem is that children, families, communities, and small businesses are being injured by dangerous, even reckless, corporate behavior. They need access to our civil justice system. While most businesses take care to sell safe products, some do not. Consider families whose children became ill or died after eating E. coli tainted hamburgers, small businesses and consumers who were overcharged on electric rates, communities whose drinking water was contaminated by pesticides, drivers whose auto insurance policies were unfairly canceled. All of them joined together in class action suits. If H.R. 1875 had been in effect, they would have all found it far more difficult, if not impossible, to get their fair day in court.

I join with consumer groups and senior groups in opposing this legislation.

Mr. GOODLATTE. Mr. Chairman, I yield 4 minutes to the gentleman from Virginia (Mr. DAVIS).

Mr. DAVIS of Virginia. Mr. Chairman, let me just address some of the comments my colleagues made. Contrary to the assertion that H.R. 1875 would not take away any authority from State courts or otherwise offend well-established principles of federalism, this particular legislation, I think, recognizes that the expansion of Federal diversity jurisdiction over interstate class actions envisioned in this legislation is entirely consistent with the current concept of such jurisdiction.

At present, the statutory gatekeeper for Federal diversity jurisdictions is 28 U.S.C. 1332, which essentially allows Federal courts to hear cases that are large in terms of the amounts in controversy and that have interstate implications in terms of involving citizens from multiple jurisdictions.

By their nature, though, these class actions typically fulfill these requirements. Class actions normally involve so many people and so many claims, that they invariably put huge dollar sums into dispute and implicate parties from multiple jurisdictions. Yet, because section 1332 was originally enacted before the rise of the modern day class actions, it does not take account of the unique circumstances presented by class actions.

As a result, as interpreted by Federal courts, that section has served to potentially exclude class actions from Federal courts while allowing Federal courts much smaller cases having few, if any, interstate ramifications.

That technical problem would be corrected by this legislation. I think it was put together by former solicitor general Walter Dellinger, as he testified before the House Committee on the Judiciary hearing on the bill that if Congress were to rewrite completely the Federal diversity legislation statute, there would be really little legitimate debate that interstate class actions should be the first and foremost type of case to be included within the scope of this statute. So I think the implication there is clear.

I want to thank my friend, the gentleman from Virginia (Mr. GOODLATTE), for introducing this legislation. We have worked together on so many legal reforms and technology-related pieces and to bring it to where it is today, where I think it is on the verge of passage.

This particular legislation implements procedural reforms for interstate class action lawsuits. I think it reduces costs to consumers. It solidifies the rights of plaintiffs, of plaintiffs, by ensuring that they and not their lawyers receive the majority of compensation when they have proven their claims in the court.

Now, what does this bill do? It is intended to correct a technical flaw in the current Federal diversity of citizenship jurisdiction which tends to prevent interstate class actions from being adjudicated in Federal courts. Federal courts will be able to handle class action lawsuits that truly involve interstate issues. This legislation makes it easier for plaintiff class members and defendants to remove cases to Federal court where multiple State laws are more appropriately heard.

Interstate class actions filed in State court could be removed to Federal court using existing removal procedures with three new features.

Unnamed class members who are plaintiffs may remove to Federal court class actions in which their claims are being asserted within 30 days after formal notice. Any party, any party whose name can be removed, the consent of the other parties is not required. So plaintiffs' rights are protected in this case and the bar on removing cases to Federal court after one year would not apply to class actions, although removal would still be required within 30 days of the first notice.

If a removed class action is found to not meet the requirements for proceeding on a class basis, the Federal court would dismiss the action without prejudice. Plaintiffs could then refile their claims in the State court, and the statute of limitations on individual class members' claims in such a dismissed class action will not run during the period of action that it was pending in the Federal court.

What could be fairer to all concerned? The act applies only to claims that are filed after the date of enactment.

I think this is good legislation. I think when we look back at the history, that most interstate class actions cannot be heard in Federal court today due to the Federal diversity jurisdiction statutes that allow attorneys to literally, as my friend, the gentleman from Virginia (Mr. MORAN) said, game the system, or making statements about the amounts in controversy and then reversing those statements later on.

This legislation is needed. I hope my colleagues will vote to adopt it.

□ 1215

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE), who serves on the Committee on the Judiciary and who has worked very vigorously on this subject.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentleman for yielding me this time, and I thank him for his leadership. I thank the gentleman from Virginia (Mr. GOODLATTE), my good friend, Mr. Chairman, who has offered this legislation in good faith and good intentions.

The previous speaker and I have shared a common training in law school, and so it certainly causes me stress to rise in opposition to his position. However, I would argue vigorously that rather than ease the burden of litigants going into the court system, in fact, Mr. Chairman, this represents a sealed, locked, closed and forever impenetrable door to justice in the United States. I say that with a good deal of documentation.

First of all, albeit the testimony in our hearings, there is no concrete evidence that State courts are not doing justice in class action lawsuits; that there is no bias toward the defendant or bias against the defendant, or bias for the plaintiff, or bias against the plaintiff.

We realize that class actions were initially created in State courts based on equity and common law, and I certainly do not want to drain our interests in defining both of those, but it simply means that one comes into a court of equity and we balance the rights and try to be fair for those who would petition the court for justice. It was a way for the common person, common law, to get inside the courthouse and to find justice.

With this legislation that creates partial diversity, what we are saying is, one is blocked from going into the courthouse. Any iota of diversity, that means if one has a class action that inquires or incorporates thousands of Texans, and by the way, the Texas State courts have handled class action lawsuits very ably. But if one has a diversity case or a class action case, this particular statute allows one lone person, a citizen of a State different from the defendant, to add or confuse the mix, if you will, and move this case immediately to the Federal court.

What a shock to those plaintiffs who have organized around an issue, and more importantly, Mr. Chairman, what a shock to the Federal courts who, more often than not, do not certify class action cases and have already indicated to us that they are overwhelmed and overworked with not enough Federal courts, not enough Federal judges, and not enough opportunity to do justice to the cases that they are already in.

Might I say that many of us who have joined in this overload of the Federal courts, many times who have federalized drug laws, and some are very much concerned about the overload, we federalize any number of cases, and now we find, particularly in the State of Texas, I will tell my colleagues that our Federal courts, particularly in the southern district, are overwhelmed with drug cases.

They do drug cases maybe 80 percent of the time, criminal drug cases. We may disagree with the fact that those cases are there and we are criminalizing the smallest amount of drug cases; we are not getting the kingpins, we are just throwing any Tom, Dick and Harry in jail and not solving the problem, but these courts are overwhelmed.

Now, this particular statute offering itself as a justice statute is everything but that. What it does is, it takes the class action lawsuits like a tobacco case lawsuit that is smoothly running through the courts in the State system and throws it into the deadlock of the Federal system; one, they might not have even gotten there, but more importantly, more importantly, most of these cases will not be certified.

This statute would also diversify or throw it to the Federal courts if a citizen of a State is different from any defendant, a foreign state or citizen of a foreign state and any defendant is a citizen of a state, or a citizen of a state and any defendant is a citizen or subject of a foreign state. So this is seeking to implode the class action litigation. It is seeking to imbalance the rights of an individual citizen who would join in a class action against a conglomerate, Mr. Chairman.

I would simply say to my colleagues that this particular Interstate Class Action Jurisdiction Act should not be supported. The President intends to veto this particular statute, and I would hope that we would find a better compromise to serve the scales of justice in the United States.

Mr. Speaker, I have had the privilege to listen to the testimony of many distinguished witnesses when this measure came before the full Committee on the Judiciary. I had hoped that the supporters of this bill in its present form could have persuaded me otherwise, but I simply cannot approve of this measure in its present form as it contains too many potential problems. I am sympathetic to the proponents of this legislation's desire to ensure that class actions are used for their intended purposes. This bill, H.R. 1875, the "Interstate Class Action Jurisdiction Act of 1999," as drafted goes too far.

As you may well be aware, class action suits were initially created in State courts based on equity and common law. In 1849, class action suits became statutory under the Field Code. In 1938, a Federal class action rule was first enacted in the form of Federal Rule of Civil Procedure 23, and in 1966, Rule 23 was amended to grant more flexibility with regard to class actions, particularly with respect to actions seeking monetary damages.

Thirty-six States have adopted the amended Federal Rule 23. Seven States still use class action rules modeled on the original Federal Rule 23. Four States use the Field Code-based class rules. Three States still permit class action suits at common law have no formal class rules.

Article III of Constitution provides for "limited federal court jurisdiction court based upon diversity." Currently, disputes may reach Federal court where the plaintiffs and defendants are residents of different States and the amount in controversy exceeds $75,000. The status quo allows action suits only if every plaintiff is diverse with respect to the defendant. Given the sheer number of plaintiffs in a class action suit, diversity often cannot be achieved.

By amending 28 U.S.C. 1332 (the diversity statute), this bill provides Federal jurisdiction as long as any member of a proposed plaintiff class is (1) a citizen of a State different from any defendant; (2) a foreign state or citizen of a foreign state and any defendant is a citizen of a State; or (3) a citizen of a State and any defendant is a citizen or subject of a foreign state.

This creation of partial diversity, then, drastically changes the nature of Federal jurisdiction. While this measure would provide some sense of uniformity to class actions, I am afraid that this contravenes the Supreme

Court's requirement of complete diversity between all named plaintiffs and defendants as articulated in Strawbridge v. Curtiss, 3 Cranch 267 (1806).

I am concerned that this measure is not driven by the desire to streamline the Federal justice system, but instead by the want to protect large corporations. Corporations want Federal jurisdiction as they perceive this arena as more favorable. This bill would funnel class action suits into Federal courts, which has the potential to permit corporations to avoid more stringent State laws.

As currently drafted, the bill's partial diversity standard that likely would result in an explosion in the number of civil cases extending well beyond the capacity of the Federal courts. Congress has been increasingly federalizing State law in general, and State criminal law in particular. In 1997, alone, 22,603 civil cases were pending for 3 years or more. More importantly, the Senate has failed to fill a number of Federal vacancies (over 10 percent of the Federal judicial positions remain vacant).

In addition, H.R. 1875 could result in less efficient litigation. Since Federal courts would still require complete diversity in all other Federal diversity cases, plaintiffs likely would seek to formulate class action suits simply to satisfy the partial diversity requirement created for class action claims. Again, this situation likely would drive more cases into Federal court and increase the burden on the courts.

This legislation simply raises too many questions and presents too many quandaries. Unless these problems are rectified, I cannot support this measure.

Mr. GOODLATTE. Mr. Chairman, I yield myself 1 minute to respond to a couple of points.

First of all, the President has not indicated that he intends to veto this legislation. There have been communications from his representatives that they might recommend that to him, but that is not the same thing as a veto threat.

Secondly, I would point out to my colleague from Michigan that while the diversity amount, the amount in controversy was raised from $50,000 to $75,000 by the Federal judiciary, the purpose of that is to screen out small lawsuits from going into Federal court. But that is not the case here at all. This is about bringing large lawsuits to Federal court.

The legislation requires a minimum of $1 million in controversy to bring a diversity case class action into Federal court, so we eliminate the anomaly of a situation where somebody with a $75,000 claim can get into Federal court, but somebody who has a class action suit with 100,000 plaintiffs and an amount in controversy of $10,000 each, or a $1 billion claim, cannot get into Federal court today because they do not meet that diversity requirement. This changes that discrepancy in the law and allows big, diverse cases to come into Federal court.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentleman from Virginia (Mr. SCOTT), who is opposed to the bill and who serves on the Committee on the Judiciary.

Mr. SCOTT. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, this is a radical response to a handful of court decisions that some disagree with. The response is to use political clout just to change the system.

Now, this is not the first time that we have changed the system when we disagree with a court decision. Even pending cases, for example, in the Oklahoma bombing case, we changed the law right in the middle of the case and forced the judge to reverse a preliminary ruling. After an airline case just a couple of years ago, we changed the law after the crash to enable some plaintiffs to get increased damages. The Committee on Education and the Workforce, Mr. Chairman, has already reported a bill which will have the effect of reversing a lower court decision. The case is now on appeal. That bill, if passed, would reverse the lower court decision. We even enacted legislation about a year or two ago which had the effect of entering final judgment in a child custody case that was pending.

So, Mr. Chairman, if one has the political clout, one can come to Congress and change the system to one's advantage and receive special treatment, rather than being relegated to going through the regular court process. That is not fair.

This is also a bad bill, Mr. Chairman, because it is not good policy to continually federalize court proceedings. The Federal judiciary has already complained, the Chief Justice has complained about cases being transferred to Federal court. We have even now street crimes, juvenile crimes being more and more handled by Federal courts. Those are supposed to be handled by the State courts and here we are again federalizing cases.

Now, the proponents complain that the State courts rule on interests of out-of-state parties. That has always been the case and it will always be the case, and this bill does not change it. In fact, if one has multiple defendants of large corporations, multiple plaintiffs, but not technically a class, State courts can continually hear these cases. One can have billion dollar cases, complex, multi-State, but if one has a plaintiff and a defendant both from the same State, the Federal court will not hear that case, but the State court will rule on other State laws, other State interests.

Mr. Chairman, the only people that will be denied the access to State courts will be those who are consumers that need the procedure of a class action to actually hear their cases. Those are cases which are small and cannot be brought as individual cases, so the consumers will be denied, but the large corporations will not.

This bill does not reform; it just transfers the cases of consumers into Federal courts and denies them State access. For those consumers who are affected, this bill will cause confusion, because if a State case is filed, this bill allows anybody who alleges that they are affected by the case to start filing motions. The person is not a plaintiff; the person is not a defendant, just a stranger, so that if one is talking about gaming the system, let us have a defendant that does not like being in State court, finds a friend from out of State, brings them in, and starts filing motions in Federal court.

Now, the person who is filing, if they do not like being in the class, they can opt out of the class, so they have no legitimate purpose other than to add confusion to the case. So rather than having the plaintiff and the defendant proceeding with the trial or with settlement, this bill allows strangers to come in and delay the proceedings, adding expense and making it less likely that the merits of the case will ever be considered.

Mr. Chairman, this bill is unneeded and it is unfair to consumers. It only benefits corporate wrongdoers who want to delay and complicate the cases and, therefore, should be defeated.

Mr. GOODLATTE. Mr. Chairman, I yield 5 minutes to the gentleman from Tennessee (Mr. BRYANT), another lead cosponsor of the legislation.

Mr. BRYANT. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I am pleased to join with a bipartisan group of Members of this House to sponsor this change in this law that is very much needed. As my predecessor, the gentleman from Virginia (Mr. SCOTT) said, sometimes it is necessary to change a law, and that is what we are doing here.

Over the past several years there has been an outburst of the filing of a number of class action lawsuits in State courts. Now, this is proper under law, but the system is also being gamed in doing that by using the principle of diversity and defeating that principle of diversity to end up in State court and prevent the proper removal or possibility of removal to a Federal court. This bill simply corrects this.

Because of the amount of exposure that sometimes these defendants face in a class action lawsuit, the economics of the situation, the expense of having to go through a lengthy trial, the number of claimants involved, very often the defendants have to settle the case out of court. The trial lawyers know this and that is why they file the case like they do, and they do this.

In many of those cases, unfortunately, these class action lawsuits, the plaintiffs, the people who have actually sustained the injuries that the lawsuit is all about, receive very little. I know we have heard a lot about that already,

anything from certificates to actually, in some cases, owing money back, whereas the lawyers are the main ones that benefit from this system in terms of receiving enormous fee awards.

That is simply not right. That is part of the gaming of the system where they go out and forum shop and select, rather than a Federal court which is better prepared to handle these types of cases. They select a particular State court around the country that probably is lacking in many ways the ability to handle these lawsuits.

The Federal judges, I understand, will complain that they are overburdened already, and unquestionably, they are. But we hear those same comments from the State judges in the State courts. Everybody in the judicial system today is overburdened. That is because there are an awful lot of criminal cases out there, and there are an awful lot of civil cases out there. So it is not a question of who is the busiest. But I would say that the Federal judges have United States magistrate judges that help them dispose of cases; they have a number of law clerks that help them that do research and help them, but in most cases where we are talking about a State judge, these are simply not assets that are available to a State judge.

In most cases, State judges lack the experience in handling complex, complicated class-action lawsuits, so in terms of actually getting a forum that is best suited, that is most appropriate to give fair justice, there is no question that the Federal courts are better suited to handle these class-action lawsuits.

□ 1230

But again, because of the current law that deals with diversity, that it can easily be affected by adding one party to that to defeat that diversity, this is not occurring, the fact that the Federal courts are not hearing the class action lawsuits as they should because they are being sent to the State courts and being kept there.

Under our bill, nothing changes about the substantive law, the law that will govern this case. The law that whatever judge that hears this case will apply is still the same. This is simply a matter of correcting the venue, the forum, the place that the trial would be held.

In terms of dealing with a company that perhaps does business across the country, in terms of dealing with plaintiffs, alleged victims of this company or these companies that live in all 50 States that could very well make up the members of that class, it simply is unfair that one State court, whether it is Tennessee, that I represent, or Alabama, or Oregon, should be able to hear that type of case.

Originally, I believe the forefathers put this in our Constitution in terms of setting up the trial system, and our law evolved over the years to create a diversity, so when we had citizens from different States, that we could avoid the home cooking that sometimes occurs when one does not belong to that State, they are sued there, and they have to go in and defend themselves.

The courts recognized that. The Congress has recognized that by creating this diversity so they can have a level playing field, they can be treated fairly. In some cases that was not always the situation because, again, they went into a home cooking environment.

I would suggest that is happening in some of these cases. That is basically the reason that we are here. We are trying to ensure that fair justice is there for all parties. Even though they might be tobacco, firearms, or big corporations, we are all entitled to equal justice, and I think this is a big first step to ensure that occurs.

Mr. CONYERS. Mr. Chairman, I yield 5½ minutes to the distinguished gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, let me make several points, as many points as my time will allow me to make, about this bill, and encourage my colleagues to vote against this proposal.

First of all, I practiced law for a number of years before I ever thought about running for Congress. There is just a basic fairness argument that I think we all need to be aware of.

If a plaintiff is injured, he goes and hires a lawyer, they cultivate, research, put together a case, decide where the appropriate place is to litigate that case, spend months and months preparing for the case, file the case. Two days later somebody who has done absolutely nothing to get that case to trial under this bill has the ability to walk in and move that case to another forum. There is something patently unfair about that. I just want us to focus on that.

The second point I would make is that in 1994, when my Republican colleagues came riding into the House, one of the principles that they gave major lip service to was the whole notion that there was too much going on at the Federal level, that we needed to decentralize government, that our whole system of Federalism was in jeopardy, and we needed to return power to the States.

Time after time after time since 1994 we have seen our Republican colleagues say, well, we do not like the result that we got at the State level, so let us federalize this and let us just take it over, an absolute erosion of States' rights in the criminal law area.

In the area of tort reform they have tried to do it, in the area of juvenile law they have tried to do it. We do not even have a juvenile court, a juvenile judge, a juvenile counselor, and yet, we have tried to federalize juvenile law, and the people who are behind that are the very same people who in 1994 were railing and rhetorically saying, this is terrible, to federalize all this stuff. We need to be returning rights and responsibilities to the most local level, to the State level, the local level, the individual level. Here we are again in this matter trying to bring something else into a Federal court.

The third point I want to make, the Federal courts are hopelessly backlogged. They cannot handle the business that they are doing now. We cannot get the Senate to confirm enough people to fill the vacancies that exist on the Federal bench. Even if they did fill them, there would not be enough judicial power to handle all of these cases.

Yet, here we are in our infinite wisdom saying that the Federal courts know better; the State law, the Federal law, we know everything at this level. This is absolutely contrary to the horse that my colleagues rode into this House on, the States' rights horse. We should not sanction this. It is just a bad idea.

The final point I want to make, and I will talk about this a little bit more in the context of an amendment that I have to offer, is that even if this were a good idea, this bill is so badly drafted, there are some irrationalities in the drafting of the bill, that we are going to try to correct some of them during the course of the debate, and hopefully we will get some of those things worked out.

But there are some just severe unintended, or maybe they are intended. I never know whether my colleagues are accomplishing things that they intend or accomplishing things they do not intend, since they told me they intended to preserve States' rights, and they keep cutting the legs from under it.

Mr. SCOTT. Mr. Chairman, I yield 2½ minutes to the gentleman from California (Mr. SHERMAN).

Mr. SHERMAN. Mr. Chairman, I rise against this bill because it is part of a two-part pincers movement aimed at the heart of impartial justice.

Part one, represented by this bill, shifts to the Federal bench most important class action lawsuits. Part two, the other part of the pincer, is to make sure those Federal benches are empty or overburdened with other work.

We know that additional work has been shifted to the Federal judiciary. We know most of the judicial appointments of the President have been held up. But we had a right to think that the other body would in due time act on those judicial appointments. Now I want to commend the chairman of the Committee on Rules for revealing the

previously secret part of the Republican plan. It is to keep the Federal judicial benches empty until such time as there is a Republican president.

So what does this bill do? It says you cannot go to a State judge, and you cannot have a Federal judge, unless appointed by a Republican president. So the only judges that can hear class action lawsuits are those that pass a Republican litmus test, and they have the gall to complain about forum shopping.

This takes forum shopping to a new level, because the second part of this pincers movement is nationwide forum tampering, politicizing the Federal courts. The least we could do in this body is to suspend action on this bill until the other body acts upon the President's judicial appointments, confirming those who are qualified, rejecting those who are not qualified, not on the basis of a political litmus test but on the basis of judicial qualifications.

The small in our society will be able to demand justice from the powerful only if we defeat this bill.

Mr. Chairman, I get all wound up on this and then I realize it is time to calm down, because we are not really legislating here. This bill, if it passes both bodies, is going to be vetoed by the President. This is never going to become law. This is political pontificating. This is not real legislating. We are simply here wasting time in the guise of addressing a serious problem.

I look forward to the day when we work out a genuine bipartisan solution that has wide support, not narrow support, wide support on both sides of the aisle, and deal with tort reform.

Mr. GOODLATTE. Mr. Chairman, in that regard, it is my pleasure to yield 2 minutes to the gentleman from Alabama (Mr. CRAMER), yet another Member from the other side.

Mr. CRAMER. Mr. Chairman, I appreciate the gentleman yielding time to me.

Mr. Chairman, I join with my colleagues on this side of the aisle and rise in support of H.R. 1875, the Interstate Class Action Jurisdiction Act of 1999.

I will repeat some of the things that have already been said today. I bring to this debate maybe a unique perspective. I am a lawyer and I am from Alabama. My State has been the butt of many class action jokes. We have seen the proliferation of class actions, frivolous actions, in our State courts.

We have all heard about drive-by certifications, in which classes were certified on the same day that classes were filed, sometimes even before the defendants were notified about the lawsuits. People have heard about the judge who certified I think in a 2-year period of time more class actions than all of the Federal judiciary combined.

Some say if Alabama has a problem, Alabama ought to settle that problem or deal with that problem. We in fact have. The Alabama Supreme Court, the Alabama legislature, they have taken actions to end same-day certifications. We have now made clear that we follow Federal rule XXIII.

It is a good step, but that does not end the problem. These interstate class action lawsuits do not belong in State and county courts in the first place. I do not want a judge in New York determining the rights of citizens in Alabama, and I do not think judges in Alabama should do the same thing for people who live in New York.

There is an important constitutional issue at stake here. I think interstate class actions are meant for the Federal diversity jurisdiction. The Framers of the Constitution intended for large interstate lawsuits to be heard in Federal court.

Members have heard a lot today about what the bill does do. I want to close with what it does not do. This is not a broad tort reform bill. It does not preempt any State laws or change the laws under which a claim will be heard. It does not prevent any claim from being heard, or close the courthouse doors.

This in fact makes sense, and we should pass H.R. 1875, the Interstate Class Action Jurisdiction Act of 1999.

Mr. SCOTT. Mr. Chairman, I yield myself such time as I may consume.

We have many points that will be made during the amendments, Mr. Chairman. I would just respond to the suggestion that this will clear up the situation where complex cases will have to be heard in Federal court.

Mr. Chairman, if we have 10 corporations suing 18 different corporations from a number of States, if one plaintiff corporation and one defendant corporation are from the same State, that case involving many different States, involving many different State laws, would be heard in State court.

However, if there is a corporation that is systematically ripping off consumers, a simple systematic theft, not complicated, they cannot use the State court. They are relegated to Federal court by this bill.

□ 1245

Now, it would only serve to complicate the litigation for the consumers trying to get justice against a wrongdoing corporation.

Mr. Chairman, this bill is a bad bill. It serves no constructive purpose. There is no need for it. It is unfair to consumers and, therefore, should be defeated.

Mr. Chairman, I yield back the balance of my time.

Mr. GOODLATTE. Mr. Chairman, I yield myself the remaining time.

Mr. Chairman, this is very good legislation that serves very good practical purposes, and let me point out two of them.

First of all, it ends the abuse of nationwide forum shopping to find the one judge in the one court in the one State that thinks that anything goes with regard to class actions. We have seen those abuses.

The gentleman from Alabama (Mr. CRAMER) cited the fact that his State has seen class action abuse in the past. There are 4,700 different court jurisdictions in this country. When one has a class action, it is unlike a case where an individual might have two or three different jurisdictions where they can bring their own personal injury suit or contract action. In a nationwide class action suit, they can often choose from all 4,700 different jurisdictions. They should not have the opportunity to do that. There should be more standardized procedures, and we accomplish that by allowing the removal of truly nationwide class action suits to Federal court.

Secondly, the most diverse cases in this country involving millions and even billions of dollars are currently unable to be brought in the court that can best handle them, the Federal courts. This legislation cures this.

Mr. Chairman, I urge my colleagues to support this legislation and oppose the amendments.

Mr. POMEROY. Mr. Chairman, I rise in reluctant opposition to H.R. 1875, the Interstate Class Action Jurisdiction Act of 1999. I believe strongly that action must be taken to address the widespread abuse of class action rules. This legislation, however, would have the effect of removing the vast majority of class action lawsuits to the already overburdened federal courts and denying plaintiffs in legitimate class actions their right to due process.

There is little dispute that in recent years the class action device has resulted in serious and rampant abuses of our legal system. Federal rules of civil procedure currently make it exceedingly difficult for defendants to remove a class action case to federal court, even when a case is clearly interstate in nature. Federal ''complete diversity'' rules have allowed endless forum shopping to keep class action cases out of the federal courts. In some cases, plaintiffs are named in class action cases based only on their state of residence, simply to destroy complete diversity.

Such legal maneuvers have even been conducted at the expense of plaintiffs involved. In one recent state court class action settlement, consumer class members actually ended up losing money—each one was required to pay $91.13—while the lawyers who brought the lawsuit made $8.5 million. Other such examples abound in which class members received virtually no compensation. Action must be taken to protect both consumers and corporations from such abuses of the legal system.

Although I believe strongly in the need for class action tort reform, I reluctantly oppose H.R. 1875 in its current form. By establishing ''minimal diversity'' rules of jurisdiction, H.R. 1875 would shift jurisdiction of most class action lawsuits from state court to federal court. This would have the practical effect of overburdening the already understaffed federal courts, while further delaying and possibly denying justice for injured plaintiffs.

Mr. Chairman, although I do not support this particular vehicle for class action tort reform, I remain committed to correcting the abuses of our legal system. I am hopeful that my concerns with H.R. 1875 can be resolved as the bill moves through the Senate, so that I may support the conference report for this legislation.

Mr. STARK. Mr. Chairman, I rise today in opposition to H.R. 1875, the Interstate Class Action Jurisdiction Act of 1999. This so-called ''tort reform'' measure proposes to create a huge new roadblock to justice for class action litigants.

If enacted, H.R. 1875 will harm consumers and benefit corporate defendants—among them managed care plans, gun manufacturers and tobacco companies. Although ERISA does not permit injured enrollees to sue their HMO under state malpractice laws, recently some class actions have been successfully filed alleging violations of state consumer fraud and unfair trade practice laws. These class actions are being used to require HMOs to provide needed treatments, access to specialists, and continuity of care.

Yet H.R. 1875 would reverse these gains by making it far easier for managed care plans to force removal of cases filed under state consumer fraud laws to federal court—where outcomes could be inconsistent and unfair.

Currently, most class actions are brought under state law with state court judges interpreting and applying the standards litigants must meet. H.R. 1875 would divest state courts of many of these cases, requiring federal judges to interpret and apply state law. This opens the door to inconsistent interpretation by judges not familiar with state law.

Our current class action system is a win-win-win—for the courts, for litigants, and for society. Class actions are now heard by judges knowledgeable in the area and familiar with the law. The federal bench lacks the resources to handle these cases in its already overburdened docket.

Under present guidelines, class actions may be heard by federal judges when the damage amount involved is more than $75,000 per plaintiff and other requirements are met. In state courts, class actions can be brought when the amount of damage per plaintiff is modest.

H.R. 1875 eliminates the $75,000 figure and the other requirements. Thus, corporate defendants could easily request removal of many state class actions to federal court—over the objections of all plaintiffs or co-defendants.

If this bill is enacted, it will essentially deny a forum to thousands who have been injured by exposure to tobacco products, asbestos and other unsafe products, and thwart reforms that benefit society as a whole. In effect, the class action device itself would be destroyed.

If H.R. 1875 becomes law, dozens of class action lawsuits that could help thousands will simply never be heard. Consumers will again become victims—this time, of a massive federal judicial logjam.

Tobacco companies, asbestos makers, drug manufacturers, and HMOs are lobbying strongly for H.R. 1875. The Interstate Class Action Jurisdiction Act of 1999 gives them relief at the expense of justice that consumers deserve.

A ''yes'' vote for H.R. 1875 is fundamentally a vote against consumers' rights. It should be quickly rejected.

The CHAIRMAN pro tempore (Mr. BURR of North Carolina). All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill shall be considered by section as an original bill for the purpose of amendment, and each section is considered read.

No amendment to that amendment shall be in order except those printed in the portion of the CONGRESSIONAL RECORD designated for that purpose and pro forma amendments for the purpose of debate. Amendments printed in the RECORD may be offered only by the Member who caused it to be printed or his designee and shall be considered as read.

The Chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

Mr. GOODLATTE. Mr. Chairman, I ask unanimous consent that the committee amendment in the nature of a substitute be printed in the RECORD and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

The text of the committee amendment in the nature of a substitute is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND REFERENCE.

(a) SHORT TITLE.—This Act may be cited as the ''Interstate Class Action Jurisdiction Act of 1999''.

(b) REFERENCE.—Whenever in this Act reference is made to an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 28, United States Code.

SEC. 2. FINDINGS.

The Congress finds that—

(1) as recently noted by the United States Court of Appeals for the Third Circuit, interstate class actions are ''the paradigm for Federal diversity jurisdiction because, in a constitutional sense, they implicate interstate commerce, invite discrimination by a local State, and tend to attract bias against business enterprises'';

(2) most such cases, however, fall outside the scope of current Federal diversity jurisdiction statutes;

(3) that exclusion is an unintended technicality, inasmuch as those statutes were enacted by Congress before the rise of the modern class action and therefore without recognition that interstate class actions typically are substantial controversies of the type for which diversity jurisdiction was designed;

(4) Congress is constitutionally empowered to amend the current Federal diversity jurisdiction statutes to permit most interstate class actions to be brought in or removed to Federal district courts; and

(5) in order to ensure that interstate class actions are adjudicated in a fair, consistent, and efficient manner and to correct the unintended, technical exclusion of such cases from the scope of Federal diversity jurisdiction, it is appropriate for Congress to amend the Federal diversity jurisdiction and related statutes to allow more interstate class actions to be brought in or removed to Federal court.

SEC. 3. JURISDICTION OF DISTRICT COURTS.

(a) EXPANSION OF FEDERAL JURISDICTION.—Section 1332 is amended by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively, and by inserting after subsection (a) the following:

''(b)(1) The district courts shall have original jurisdiction of any civil action which is brought as a class action and in which—

''(A) any member of a proposed plaintiff class is a citizen of a State different from any defendant;

''(B) any member of a proposed plaintiff class is a foreign state and any defendant is a citizen of a State; or

''(C) any member of a proposed plaintiff class is a citizen of a State and any defendant is a citizen or subject of a foreign state.

As used in this paragraph, the term 'foreign state' has the meaning given that term in section 1603(a).

''(2)(A) The district courts shall not exercise jurisdiction over a civil action described in paragraph (1) if the action is—

''(i) an intrastate case,

''(ii) a limited scope case, or

''(iii) a State action case.

''(B) For purposes of subparagraph (A)—

''(i) the term 'intrastate case' means a class action in which the record indicates that—

''(I) the claims asserted therein will be governed primarily by the laws of the State in which the action was originally filed; and

''(II) the substantial majority of the members of all proposed plaintiff classes, and the primary defendants, are citizens of the State in which the action was originally filed;

''(ii) the term 'limited scope case' means a class action in which the record indicates that all matters in controversy asserted by all members of all proposed plaintiff classes do not in the aggregate exceed the sum or value of $1,000,000, exclusive of interest and costs, or a class action in which the number of members of all proposed plaintiff classes in the aggregate is less than 100; and

''(iii) the term 'State action case' means a class action in which the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief.

''(3) Paragraph (1) shall not apply to any claim concerning a covered security as that term is defined in section 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934.

''(4) Paragraph (1) shall not apply to any class action solely involving a claim that relates to—

''(A) the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

''(B) the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).''.

(b) CONFORMING AMENDMENT.—Section 1332(c) (as redesignated by this section) is amended by inserting after ''Federal courts'' the following: ''pursuant to subsection (a) of this section''.

(c) DETERMINATION OF DIVERSITY.—Section 1332, as amended by this section, is further amended by adding at the end the following:

''(f) For purposes of subsection (b), a member of a proposed class shall be deemed to be a citizen of a State different from a defendant corporation only if that member is a citizen of a State different from all States of which the defendant corporation is deemed a citizen.''.

SEC. 4. REMOVAL OF CLASS ACTIONS.

(a) IN GENERAL.—Chapter 89 is amended by adding after section 1452 the following:

''§ 1453. Removal of class actions

''(a) IN GENERAL.—A class action may be removed to a district court of the United States in accordance with this chapter, but without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed—

''(1) by any defendant without the consent of all defendants; or

''(2) by any plaintiff class member who is not a named or representative class member of the action for which removal is sought, without the consent of all members of such class.

''(b) WHEN REMOVABLE.—This section shall apply to any class action before or after the entry of any order certifying a class.

''(c) PROCEDURE FOR REMOVAL.—The provisions of section 1446(a) relating to a defendant removing a case shall apply to a plaintiff removing a case under this section. With respect to the application of subsection (b) of such section, the requirement relating to the 30-day filing period shall be met if a plaintiff class member who is not a named or representative class member of the action for which removal is sought files notice of removal no later than 30 days after receipt by such class member, through service or otherwise, of the initial written notice of the class action provided at the court's direction.

''(d) EXCEPTIONS.—

''(1) COVERED SECURITIES.—This section shall not apply to any claim concerning a covered security as that term is defined in section 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934.

''(2) INTERNAL GOVERNANCE OF BUSINESS ENTITIES.—This section shall not apply to any class action solely involving a claim that relates to—

''(A) the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

''(B) the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).''.

(b) REMOVAL LIMITATIONS.—Section 1446(b) is amended in the second sentence—

(1) by inserting '', by exercising due diligence,'' after ''ascertained''; and

(2) by inserting ''(a)'' after ''section 1332''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 89 is amended by adding after the item relating to section 1452 the following:

''1453. Removal of class actions.''.

(d) APPLICATION OF SUBSTANTIVE STATE LAW.—Nothing in this section or the amendments made by this section shall alter the substantive law applicable to an action to which the amendments made by section 3 of this Act apply.

(e) PROCEDURE AFTER REMOVAL.—Section 1447 is amended by adding at the end the following new subsection:

''(f) If, after removal, the court determines that no aspect of an action that is subject to its jurisdiction solely under the provisions of section 1332(b) may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, it shall dismiss the action. An action dismissed pursuant to this subsection may be amended and filed again in a State court, but any such refiled action may be removed again if it is an action of which the district courts of the United States have original jurisdiction. In any action that is dismissed pursuant to this subsection and that is refiled by any of the named plaintiffs therein in the same State court venue in which the dismissed action was originally filed, the limitations periods on all reasserted claims shall be deemed tolled for the period during which the dismissed class action was pending. The limitations periods on any claims that were asserted in a class action dismissed pursuant to this subsection that are subsequently asserted in an individual action shall be deemed tolled for the period during which the dismissed class action was pending.''.

SEC. 5. APPLICABILITY.

The amendments made by this Act shall apply to any action commenced on or after the date of the enactment of this Act.

SEC. 6. GAO STUDY.

The Comptroller General of the United States shall, by not later than 1 year after the date of the enactment of this Act, conduct a study of the impact of the amendments made by this Act on the workload of the Federal courts and report to the Congress on the results of the study.

AMENDMENT NO. 4 OFFERED BY MR. NADLER

Mr. NADLER. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. NADLER:

Page 6, line 5, strike the quotation marks and second period.

Page 6, insert the following after line 5:

''(5)(A) Paragraph (1) shall not apply to any class action that is brought for harm caused by a firearm or ammunition.

''(B) As used in this paragraph, the term 'firearm'—

''(i) has the meaning given that term in section 921(3) of title 18; and

''(ii) includes any firearm as defined in section 5845 of the Internal Revenue Code of 1986.''.

Page 8, line 16, strike the quotation marks and second period.

Page 8, insert the following after line 16:

''(3) FIREARMS OR AMMUNITION.—(A) This section shall not apply to any class action that is brought for harm caused by a firearm or ammunition.

''(B) As used in this paragraph, the term 'firearm'—

''(i) has the meaning given that term in section 921(3) of title 18; and

''(ii) includes any firearm as defined in section 5845 of the Internal Revenue Code of 1986.''.

Mr. NADLER. Mr. Chairman, this amendment would, in effect, exempt from this bill and allow the existing laws governing class action lawsuits to continue to apply to cases brought against gun and ammunition manufacturers.

We have spent months in this House debating how best to combat the rising tide of gun violence in this country, and we still have nothing to show for it. Week after week after week we hear horror stories from all over the country of mass murderers, of people walking into schools and churches and shops and opening fire on innocent people.

How does the leadership of this House propose to address this problem? With this legislation that will actually protect gun makers from the consequences of their actions and will not protect the victims of gun violence.

Mr. Chairman, guns kill almost twice as many Americans every year, as all other household and recreational products combined. Despite this grim fact, the gun industry is the last unregulated manufacturer of a consumer product. All other manufacturers are regulated, not the gun manufacturers.

Currently, citizen lawsuits serve as practically the only safety regulation, if we can call it that, of the firearms industries. Lawsuits have been the only way to force manufacturers to make their guns safer. A 1995 class action suit against Remington Arms, which settled for $31.5 million, led to the implementation of greater safety protections for owners of shotguns.

Look at what is happening all across the country. The victims of gun violence are beginning to sue gun manufacturers for their injuries as a consequence of the negligence of the gun manufacturers. Over 20 American cities, as well as the NAACP, have filed lawsuits against gun manufacturers to hold them accountable for the millions of dollars that the public sector must spend coping with the consequences of gun violence.

Gun plaintiffs, like tobacco plaintiffs and others, must sue the gun manufacturers in class action lawsuits because suing as single plaintiffs is almost invariably prohibitively expensive. We should not handicap these important civil suits just as they are beginning.

As my colleagues know, in addition to expanding Federal jurisdiction over class actions, this bill would give gun manufacturers a tremendous advantage in these cases by allowing them to remove these cases to Federal court.

These cases are, of course, determined on the basis of State tort law. The Federal courts that would decide these cases are bound by Federal law to apply, not Federal law, but the State law. But the Federal courts are always going to be much more hesitant to expand the State law from previous decisions than the State courts will, because their expertise is Federal law, not State law.

So by taking these cases from the State forum, where the States can apply and interpret their own laws, to a Federal forum, which are going to be more hesitant to interpret them in new ways and to realize the full implications of the law, we are saying to the defendants they have a much easier forum. To the plaintiffs, to the victims of gun violence, we are going to stack the decks against them.

Now, I think this is a terrible bill in general for a lot of different reasons. But even assuming we want to pass this bill, why not just allow victims of

gun violence to continue to bring their cases in State courts? Why bring them before a Federal judge who will have less expertise on the State law, will have to divert his or her attention from cases involving, for example, violence against women or access to clinic or multijurisdiction interstate cases? Are not our Federal judges busy enough?

We know that the average case, if removed to Federal court, will take 6 to 8 years to reach trial; whereas, in most State courts, it will get there in a year or two. Gun victims often cannot wait that extra time. Do we really need the Federal courts to take on thousands of new cases for their dockets?

We should support the victims of gun violence in their efforts to hold the firearms industry accountable when its products cause injury or death and when they are responsible through their negligence, because that obviously is something that has to be proven, when they were negligent and who they sell the guns to and making unsafe products and not putting safety standards or guns or whatever. When that can be proven, we should not stack the decks against the victims of gun violence by pushing this out of the local courts and into the Federal courts.

Victims of gun violence, the American people, deserve comprehensive legislation to get the guns off the streets and protect our children in the schools and protect our people in our churches and day-care centers.

They do not deserve this almost contemptuous treatment in which we say we are not doing anything to protect them, but we are going to make it harder for them if they are injured to prove the negligence of the gun manufacturers. We are going to make it more expensive. We are going to make it farther in time. We are going to make it farther in distance. We do not trust the State courts. We do not believe in States rights. We do not believe in local government despite the rhetoric on this floor. We think State courts are too generous to people. They know the people, the situation a little better than some far-off Federal court. So, therefore, let us move it to a far-off Federal court to make it harder for the plaintiffs in gun violence cases.

Mr. Chairman, I urge my colleagues, if we are going to pass this malevolent bill, at least let us exempt from it cases alleging negligence resulting in violence to victims of gun violence. We should not make it easier for the malefactors of the gun industry. We should make it harder. I urge the adoption of this amendment.

Mr. GOODLATTE. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I am strongly opposed to this amendment and what may prove to be a series of so-called carve-out amendments. Principled Members, whether they support the underlying legislation or not, will oppose this amendment and other amendments that attempt to pour their views about any particular issue that faces this Congress or any particular litigation that may go before our courts into this procedural debate about how all litigation should be considered in the form of class actions and whether or not one believes they should be removed to Federal court or not, my colleagues should not support carving out individual sectors of our economy or individual types of lawsuits.

That is exactly how this amendment was treated in a bipartisan fashion by the Committee on the Judiciary in the markup of this bill when this particular amendment or one very like it was defeated by a bipartisan 16 to 6 vote. There are good reasons why it was rejected there, and there are good reasons why it should be rejected here.

This industry-specific exemption from Federal jurisdiction makes no sense. It is like a bill of attainder. It irrationally singles out one industry and slams the Federal courthouse door in its face.

All of us strive to be sure that justice is blind. But when one identifies one group of people and says they are not entitled to the same treatment under the law that everyone else is, justice is not blind.

The amendment is wholly inconsistent with what the Framers had in mind in establishing diversity jurisdiction in Article III of our Constitution. They wanted to allow interstate businesses to have claims against them heard in Federal court so as to avoid local biases. Nowhere in this concept is the idea that certain industries should be exempted from this right, that certain kinds of businesses are less entitled to Federal court protection.

One may not like gun manufacturers, but think of the things that one does like and consider whether if a similar amendment were offered to single out something that is important to one and say that those who promote and support that particular idea, that particular industry, whatever the case might be, that they are not entitled to sit in the same forum of justice that everyone else in this country is entitled to.

The amendment clearly is designed to single out the firearms industry because, in some quarters, it is unpopular. But that is exactly what the Framers of the Constitution were trying to avoid. They are trying to ensure a fair, evenhanded Federal court forum for defendants that may otherwise be hailed into a local court less concerned about protecting the rights of an out-of-State company.

It is very interesting that in the committee report, the additional dissenting views submitted by the gentleman from New York (Mr. NADLER) and others on the gun issue, makes a big point of the fact that the NAACP has filed a class action against the gun industry, seeking to recover for money that the public sector must pay for the consequences of gun violence.

The report goes on to say that we should not handicap such important civil suits before they have even begun.

What I find very interesting about that point is that the NAACP filed their lawsuit in Federal court, not State court. That choice presumably was made because the lawyers filing the NAACP suit know that the Federal courts are more appropriate for dealing with these interstate issues presented by these cases.

This bill would make it easier for groups like the NAACP to bring such cases in Federal court because it works both ways. It expands the rights of plaintiffs to bring interstate cases in Federal court as well as expanding the ability of defendants to remove interstate cases to Federal court.

For all of these reasons, I urge my colleagues to oppose this amendment.

Mr. SCOTT. Mr. Chairman, I move to strike the last word.

Mr. Chairman, it is a bad policy to carve out exceptions in a bill like this because it creates one system for those that are popular with political clout, another system for those without political support that are unpopular.

As the gentleman from Virginia (Mr. GOODLATTE) pointed out, the constitutional principle of equal protection is violated when we have those that get one system and those in another. That principle of equal protection and constitutional protection is particularly needed when we have unpopular individuals. Those are the ones that really need the constitutional protection.

Whatever reason that this carve-out might make sense, those arguments should have been made to the bill in general. But to carve out and have a special exemption I think is wrong, and the carve-out and the amendment, therefore, should be defeated.

□ 1300

Mr. NADLER. Mr. Chairman, will the gentleman yield?

Mr. SCOTT. I yield to the gentleman from New York.

Mr. NADLER. Mr. Chairman, this is a bad bill. Now, as a general idea, I do not think it is a good idea to have specific carve-outs from legislation. But if we are going to enact egregious legislation, then we can mitigate the damages in the most obvious situations.

And for the gentleman on the other side who got up and said it is terrible, we should not carve out, let me read some of the carve-outs supported by the Republicans for similar legislation. The Biomaterials Access Insurance Act of 1997 passed into law and carves out an exception for breast implant lawsuits. It also carves out an exception for lawsuits by health care providers.

In the 104th Congress, the Common Sense Product Liability Legal Reform Act carved out an exception from the bill's provisions for lawsuits for commercial losses. This very bill carves out an exception from the bill's provisions for lawsuits for commercial losses.

The Senate version of a similar bill, S. 2236, had specific carve-outs for negligence actions involving firearms or ammunitions in negative entrustment actions.

So, Mr. Chairman, the real issue is not should there be carve-outs, because the people on the other side sponsoring this legislation have supported carve-outs. Indeed, this bill contains a carve-out. The question is which carve-outs.

And I would submit that if this bill is going to carve out an exception for lawsuits brought under the Securities Act of 1933, or the Securities and Exchange Act of 1934, as well as corporate government actions, all of which are carved out of this bill, we can carve out an exception so as not to rip the lawsuits started by States and local governments and individuals in class actions out of the State courts into Federal courts for gun manufacturers and ammunition manufacturers when they can prove negligence resulting in death or injury.

The question, as I said, is not are carve-outs a good idea. The question is, as long as we are going to have carve-outs and pass legislation in this bill, should gun manufacturers be subject to carve-outs they do not want, or should we only carve out protections for people accused of violations of securities laws.

Mr. SCOTT. Mr. Chairman, reclaiming my time, I would agree with my colleague that there should not have been carve-outs in those previous bills, there should not have been carve-outs in this bill; and, therefore, this amendment should be defeated.

The CHAIRMAN pro tempore (Mr. BURR of North Carolina). The question is on the amendment offered by the gentleman from New York (Mr. NADLER).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. NADLER. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to House Resolution 295, further proceedings on the amendment offered by the gentleman from New York (Mr. NADLER) will be postponed.

AMENDMENT NO. 3 OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment that has been made in order by the rule.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Ms. JACKSON-LEE of Texas:

Page 6, line 5, strike the quotation marks and second period.

Page 6, insert the following after line 5:

''(5)(A) Paragraph (1) shall not apply to any class action that is brought for harm caused by a tobacco product.

''(B) As used in this paragraph, the term 'tobacco product' means—

''(i) a cigarette, as defined in section 3 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332);

''(ii) a little cigar, as defined in section 3 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332);

''(iii) a cigar, as defined in section 5702(a), of the Internal Revenue Code of 1986;

''(iv) pipe tobacco;

''(v) loose rolling tobacco and papers used to contain that tobacco;

''(vi) a product referred to as smokeless tobacco, as defined in section 9 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4408); and

''(vii) any other form of tobacco intended for human consumption.''.

Page 8, line 16, strike the quotation marks and second period.

Page 8, insert the following after line 16:

''(3) TOBACCO PRODUCTS.—(A) This section shall not apply to any class action that is brought for harm caused by a tobacco product.

''(B) As used in this paragraph, the term 'tobacco product' means—

''(i) a cigarette, as defined in section 3 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332);

''(ii) a little cigar, as defined in section 3 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332);

''(iii) a cigar, as defined in section 5702(a) of the Internal Revenue Code of 1986;

''(iv) pipe tobacco;

''(v) loose rolling tobacco and papers used to contain that tobacco;

''(vi) a product referred to as smokeless tobacco, as defined in section 9 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4408); and

''(vii) any other form of tobacco intended for human consumption.''.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I started this debate by acknowledging that the class-action procedure had begun historically with a desire to give equity and justice to the people of the United States of America. I am delighted that over the years we have kept that promise to the American people. We have provided them State courts that have given us equity, given us justice, and provided the opportunity for the individual, the less-of-a-giant person, to go against the giant and prevail.

And, Mr. Chairman, whether it has been in improving car safety in America; whether it has been in providing greater assistance for efforts against manufacturers who would make defective products that would injure large numbers of people; whether it has been in health care, to improve health policy in America, the individual has been protected by the vehicle of a class action and allowing that individual to go into the State court.

Today, I offer an amendment to protect that individual again. Because I am concerned that if this bill is left unamended, it would, for the first time, give Federal courts jurisdiction over all of the State class-action claims, even those involving primarily interstate disputes over State law.

This bill will allow tobacco companies to take State class-action claims away from State courts and put them into Federal courts over the objection of plaintiffs. And, Mr. Chairman, let me tell my colleagues why that is a problem. All of the class-action lawsuits that we have heard of, and that the American people have participated in and have welcomed in getting relief for the heinousness of tobacco and its impact on health in America, would not have been allowed into the Federal courts because the Federal courts had the opportunity to certify class-action tobacco cases and they refused.

Now, in giving some deference to the Federal courts, I have already said they are overwhelmed and oversaturated. In fact, let me tell my colleagues that the Judicial Conference of the United States, Federal judges themselves, have written and said,

I want to inform you that the executive committee of the conference voted to express its opposition to class action provisions in H.R. 1875, the Interstate Class Action Jurisdiction of 1999.

These are the Federal judges.

Mr. Chairman, they do that because they too believe in justice, and they realize that they are overwhelmed and understaffed. There are not enough judges and not enough courts. So by permitting the transfer from State courts to the Federal courts, this legislation will cause indeterminable delay for class-action cases against the tobacco industry, both increasing the cost of suing the industry and in delaying justice for the individual plaintiffs.

This amendment, offered by myself and the gentleman from California (Mr. WAXMAN), would ensure that this bill does not apply to any class action that is brought for harm caused by a tobacco product. And let me say that this effort is not new. Members of Congress, the gentleman from California (Mr. WAXMAN) and others have been working on this fight for years. And out of their efforts we have seen the opportunity for the individual victim to come forward, and we have seen the tobacco industry exposed for its efforts toward promoting its product, knowing that it was dangerous to our health.

This legislation, as currently worded, would allow tobacco companies to remove class actions involving State causes of action to Federal Court involving tobacco cases, it seems. In fact, since the tobacco companies are principally domiciled in States where class actions are not being brought, minimal diversity, as defined by this bill, will always exist between the plaintiffs and the tobacco companies. And unlike the Florida case, which was rendered by the State court, which showed the devastation to those plaintiffs there, those

plaintiffs' rights would be violated by moving them to a Federal Court who might ultimately not certify the case. Mr. Chairman, is this justice?

So I urge my colleagues to look seriously at the facts and to understand that the President has indicated that this is an unbalanced law; to understand that Save Lives and Not Tobacco, an organization that has worked with the victims of tobacco, has indicated that this is a bad bill; and the American Heart Association has said this is a bad bill. The Conference of Chief Justices have said this, Mr. Chairman.

These are the State court chief justices:

> With regular communication and cooperative effort, State and Federal courts have developed a delicate, complimentary role in class action jurisprudence. H.R. 1875 would radically alter this relationship.

I tell my business friends that they have relief. I would ask that we work together between the State and the Federal system to find relief for them, but I would ask my colleagues to support this amendment and not to extinguish the rights of the victims of all of these tragedies in America. I ask my colleagues to support this amendment.

Mr. GOODLATTE. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I rise in strong opposition to this amendment, as I did to the previous amendment that was offered. This is another carve-out amendment. It is wrong for the same reasons I cited previously. It singles out a particular group of people, a particular industry, for unfair treatment under our judicial system, and we should not establish that type of principle.

The principal position, whether we are in favor of this legislation or we are opposed to this legislation, is to oppose this amendment because we should not carve out individual groups of people.

It is true that Congress has expanded Federal jurisdiction to encompass cases involving certain subject matters, civil rights, antitrust, environmental, consumer warranty, but those are exercises of Federal question jurisdiction. There is no basis and no precedent for carving out an industry from diversity jurisdiction and extinguishing its right to have cases subject to Federal jurisdiction heard in Federal Court.

Contrary to the premise of this amendment, H.R. 1875 would not turn tobacco litigation upside down. Most money obtained through tobacco litigation has come in State attorneys general cases. These are not class actions and will not be affected by this legislation. Most other tobacco cases are individual actions which, likewise, are unaffected by this legislation.

H.R. 1875 is also prospective only. It would not affect any pending cases, be they class action or otherwise.

Contrary to another premise of this amendment, there is no evidence that tobacco cases are less likely to succeed in Federal Court. Tobacco classes have been certified by both Federal and State courts. Tobacco classes have been rejected by both Federal and State courts.

There is no evidence that class members will get better treatment in State court. Indeed, the evidence is to the contrary. In the only tobacco class action to reach conclusion, the Broin case, that case ultimately settled in State court. But the class members received no money at all. Under the terms of the settlement, they obtained only a right to sue individually. Meanwhile, the class counsel, the lawyers, were awarded $49 million. One law professor assessed the settlement as follows: ''Is the system just when it allows the plaintiffs' lawyers to make $49 million for making the class worse off?''

There is no evidence that tobacco cases would get tried more quickly in State courts. It took 6 years to get the first tobacco class action to trial in State court; the second took over 4 years. The average time to trial in Federal Court is shorter.

No matter where we may stand on the tobacco issue, we should strongly oppose this amendment. And for all the reasons I just cited, I urge my colleagues to defeat this amendment.

Mr. BOUCHER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, in opposing the amendment, I would make the broad point that industry-specific denials of access to the judicial process at either the State or the Federal levels are simply not appropriate. Over the entrance to the United States Supreme Court are words which, in a phrase, define our basic belief in the rule of law. That phrase says, ''Equal justice under the law.'' To honor that principle, any attempt to close the courthouse door to any specific litigant, whether an individual, a specific corporation, or an entire industry should be defeated.

The amendment would close the door to the courthouse to any company within the tobacco industry that seeks to use the removal provisions of this legislation. That simply is not the American way. That approach violates our basic principles of fairness and our principles of equal justice. By a wide bipartisan majority the amendment was rejected by the House Committee on the Judiciary, and I strongly urge the committee here on the floor of the House today to reject this amendment as well.

Mr. SCOTT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, for the same reasons that the last carve-out was bad policy, this carve-out is a bad policy. It sets up one system for the popular, another for the unpopular. It violates the principle of equal protection.

And whatever arguments are being made for why this carve-out makes sense should have been made against the bill. The carve-outs, all of the carve-outs, should be defeated, and the bill should be defeated.

Mr. WAXMAN. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, if this legislation is enacted, it will provide the tobacco industry with unprecedented legal protection. It is nothing less than a back door immunity from class-action lawsuits, the Holy Grail of the tobacco industry.

□ 1315

This bill reminds me of the attempt last Congress to give the tobacco industry a $50-billion tax break. This motion, which was slipped into a massive budget bill, was only repealed when Democrats discovered the provision and the public outcry began. This legislation, too, is a gift for the big tobacco.

Today, most tobacco class action litigation occurs in State courts, but this bill would allow tobacco companies to remove these cases from the State courthouses all over the country. This is exactly what the industry has long sought to do. The industry knows that the rules for certifying and maintaining class actions are far more favorable to corporate defendants in Federal courts. They know that they have been able to defeat class action cases in Federal courts on procedural grounds.

This legislation will make it virtually impossible for Americans to successfully bring class action lawsuits against the tobacco companies. It is designed to create barriers, to raise hurdles, to wear down plaintiffs so that they will give up in frustration and despair.

All across America, people know about the outrageous behavior of tobacco companies. They now know how the companies target our kids, try to addict our teenagers, and have lied to the American people for 4 decades. And this House, in light of all this information, has repeatedly failed to respond to the public health crisis from cigarette smoking in this Nation.

This Congress has failed to pass comprehensive tobacco control legislation. It has failed to pass even narrow tobacco control legislation. It has turned over billions of Federal dollars to the States, dollars recovered from the tobacco settlements, without insisting that even a small portion be spent to protect our kids from tobacco. Instead, this Congress has done nothing. But now it is considering passing legislation that will actually give the tobacco companies special liability protection.

This legislation is a gift to the tobacco industry rendered at the expense of those who wish to hold that industry accountable.

Now, some will argue and have argued that this legislation simply treats tobacco like any other business in America. But it is important to remember three facts.

First, tobacco companies are selling a lethal and addictive drug. Second, the product sold by the tobacco companies are the only consumer product in America that kills when used as directed. And third, the tobacco companies have lied to and deceived the public for over 40 years. These companies have operated for decades with utter disregard to the hundreds of thousands of Americans that are killed each year.

We should put public health first and not make it more difficult to hold the tobacco companies accountable for their actions. They deserve no reward. This is a public health issue. It is about fairness for the victims of tobacco. It is time for Congress to protect our children and public health, not big tobacco.

I urge my colleagues to support the Jackson-Lee amendment.

The CHAIRMAN pro tempore (Mr. BURR of North Carolina). The time of the gentleman from California (Mr. WAXMAN) has expired.

(By unanimous consent, Mr. WAXMAN was allowed to proceed for 1 additional minute.)

Mr. WAXMAN. Mr. Chairman, I yield to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentleman for joining me on this amendment.

I wanted to add to the statement of the gentleman that there have been a number of carve-outs. In fact, we will find that there is a corporate governance carve-out that was requested. I think my colleague raised the issue that some of these were dealing with Federal questions, but some of these were dealing with the fact that the individual State interests wanted a carve-out.

In particular, in Delaware, the corporate governance was carved out because they like what is going on in State courts in Delaware.

It seems to me, with so many carve-outs, like the securities, this begs the question on a Federal issue. This is life or death. These lawsuits are life or death.

The Castano case would have never come if it had not come to the State court system. People are dying. It is important that this legislation, if passed, does not affect the ability of people who have died or are dying their day in court.

I ask my colleagues to accept this amendment because we are dealing with life or death.

Mr. WAXMAN. Mr. Chairman, reclaiming my time, a lot of people are for States' rights in this House. Except when it comes to the question of whether tobacco companies say they do not want States' rights, they want it to be a Federal issue, and then they are willing to go along with big tobacco against the chance of people who have a legitimate lawsuit to bring their case on a class action basis.

I, too, urge support for the amendment.

Mr. GOODE. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I am opposed to this amendment. I do not think that we should exempt our carve-out to tobacco industry from other business, corporations, and industries across this country. They should be treated just like any other entity under the provisions of 1875.

It is going to impact tobacco companies negatively if this carve-out is allowed. Tobacco growers in my area have already suffered greatly. In the flue-cured tobacco country, we have had a quota cut of 35 percent over the last 2 years. What does that mean? That means that they have a reduction of 35 percent of their gross income and their expenses stay about the same.

This year prices are down all across the old belt tobacco market, and growers are suffering. Many tobacco farmers are going out of business. They cannot continue along the course that has been thrust upon them.

If we single out the tobacco industry for different treatment than the rest of the businesses and companies in this country, we will be driving a further nail in the coffin of the tobacco companies. If we do not have them, we will not have buyers. Then the tobacco that is utilized in this country by those adults who choose to use it will come from China, it will come from Zimbabwe, it will come from Brazil.

I want us to be fair to the American tobacco grower, be fair to the American tobacco industry. And I hope that those that want to utilize tobacco in this country will have the opportunity to always purchase American tobacco instead of foreign tobacco. We do not need this unfair treatment for American businesses.

Mr. MEEHAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Jackson-Lee amendment. If passed and enacted, the class action bill is going to provide significant protections to corporate defendants against class action lawsuits and no industry will benefit more than the tobacco industry.

I think it is somewhat ironic that here we are today and the Justice Department has announced that they are filing a civil lawsuit seeking billions and billions of dollars' worth of damage for the taxpayers of this country, the attorneys general from around the States have negotiated a settlement worth another $250 billion, the courts are going in the direction of holding the tobacco companies accountable for decades of duplicity; and what are we doing in this House? We are going in the opposite direction. We are saying, that is okay when it comes to big tobacco.

The tobacco companies win whenever there is a debate in this House, but the people in America lose. And when we go into the courts, the only place where we have been able to level the playing field, the sponsors of this legislation want to give a special carve-out to the tobacco industry.

Currently, most tobacco class action litigation occur in State court since the plaintiffs' claims against the industry typically involve State law claims. However, this bill would allow the tobacco companies to remove these cases from State courthouses all across the country, giving the industry back-door immunity from lawsuits.

Not surprisingly, the tobacco industry has long sought to remove State class actions from Federal court. The industry knows the rules of the games of certifying classes and maintaining class actions are more favorable to corporate defendants in Federal courts than in State courts. So the tobacco companies want to have their way. They want to be able to go into Federal court and defeat class actions on procedural grounds.

Now, in the last Congress, the tobacco industry sought a complete ban on class actions and these provisions were widely criticized by the public health community and rejected in the Senate. By severely limiting State class actions, this bill will provide the tobacco industry with special protection from civil class action liability, which is exactly what the Congress and the health community has already rejected. Even if we support the changes to the class action laws that are in this bill, it makes sense to make sure that the tobacco industry is held accountable.

We are at a pivotal point in time in our history in terms of holding the tobacco company accountable. It is the leading preventable cause of death in the United States. Over 400,000 people a year die as a result of tobacco-related illnesses. The least we can do, the least we can do, is give the American people who have been victims through negligence of the tobacco companies their opportunity to join together and fight big tobacco.

The fight against big tobacco is not going to be won, unfortunately, on the floor of this House. But Americans across this country, at a minimum, should have the ability and the right to go into court and State class actions to hold these tobacco companies accountable.

Mr. Chairman, I yield to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentleman very much for yielding.

Mr. Chairman, I want to emphasize another case. I thank the gentleman for recounting this whole problem of getting into courts. If we had not had the opportunity to go into State courts, cases like Engle versus R.J. Reynolds Tobacco Company, a successful class action case in Florida, as I mentioned, would not have had the opportunity for trial. Broin versus Philip Morris, which considered the claims of some 60,000 flight attendants harmed by secondhand smoke, would not have been allowed into the courthouse.

So I want to see a balance between business interests and individual interests, but in this instance the scales of justice are weighed heavily in the opposite direction without this carve-out.

Mr. DOGGETT. Mr. Chairman, will the gentleman yield?

Mr. MEEHAN. I yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Chairman, before coming to this body, I served as a justice on the Texas Supreme Court; and I know that on our courthouse and courthouses across Texas, and I expect in the State of my colleague, as well, there are the scales of justice. We expect that every litigant will be treated fairly and that those scales will be in balance.

When we apply those scales of justice in this body on this Jackson-Lee amendment, on one side we have every public health organization, some 70 consumer groups, State judges, Federal judges, the State attorneys general, I am sure other law enforcement groups, and on the other side of that scale we have got the big tobacco lobby.

Would not my colleague say it is easy to draw the appropriate balance as between the opponents and supporters of the Jackson-Lee amendment?

Mr. MEEHAN. Mr. Chairman, reclaiming my time, I would say that that is very easy.

Mr. DOGGETT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, for the last several years, this Republican Congress has stood idle as each day some 3,000 of our children across America have had the opportunity to be introduced to nicotine. Many of them, perhaps as many as a thousand per day, will die prematurely because of their nicotine addiction.

Secret tobacco documents discovered in the course of class action litigation indicate that these tobacco giants targeted children as young as 12 years old with their propaganda about the joys of smoking.

Before Congress grants this tobacco industry special protection, we need to weigh the heavy consequences of the deplorable history of targeting our youngest Americans to take up smoking, proven in industry documents discovered in these class action suits in State court.

I believe that we must place a high priority on the deadly relationship between children and nicotine. We have to protect our children from the tobacco companies that spend over $5 billion a year, almost $14 million every single day of every single year, to promote their products because they need to replace the thousands of smokers that die off from using their products with new, young victims.

This legislation is truly back-door immunity for the tobacco industry. I commend my colleague from Texas (Ms. JACKSON-LEE) for her courage in taking on that industry and declining to give them that back-door immunity.

□ 1330

These are the same tobacco giants that sought to ban class actions in 1997, that have known about the deadly consequences of their product for decades, and that are now back here again asking for special treatment.

As my colleagues know, the relationship between the Republicans in this Congress and the tobacco industry runs very deep and constant. The only thing this House has ever done in response to this vital public health issue in the last two sessions was to approve a $50 billion tax loophole for the tobacco industry.

And when people discovered it tucked in under a title called ''Small Business Protection'', the House Republican leadership got so embarrassed, Mr. Chairman, that they withdrew the whole matter. Just when we thought perhaps the Republican leadership had learned the lesson of that misdeed, they again have stood with the tobacco industry to offer them this major break from responsibility.

Oh, yes, the Republican leadership talks about personal responsibility, but they do not mean personal responsibility for those who have produced the leading cause of preventable death in this country today, the tobacco industry. The victories that have been won in so many of these important States have occurred in our State courts. The States' attorneys general have played a critical role in exposing tobacco industry wrongdoing. In their pursuit of cases at the State level, they have been invaluable allies of the public health community.

If this bill had been law, we would still be waiting for an answer because our Federal courts are overwhelmed and backlogged in too much of the country. Florida citizens would not know as they learned through the litigation that, ''tobacco companies have engaged in a persistent pattern of fraud, of conspiracy to commit fraud and intentional infliction of emotional distress.''

If this bill had been law, Minnesota State courts would never have had the chance to tell Americans around the country that the tobacco companies set out, ''get smokers as young as possible'' and that our own children were purposefully targeted for nicotine addiction. For these tobacco companies children ''represent tomorrow's cigarette business . . . and will account for the key share of total cigarette volume for at least the next 25 years.'' Those are the words right out of the secret tobacco documents discovered in state court proceedings.

The Congress is not the only body, of course, that has considered changing its class action procedures. The same forces, the tobacco industry and its allies, that are attempting to destroy this useful remedy in this Congress came before the State capitol in the city I represent in Austin, Texas. They sought through other devices, along with their allies—the health maintenance organization and the insurance companies—to bar the doors of the courthouses of the State of Texas. Fortunately, the Texas Legislature had the wisdom to reject their entreaties, and I hope this Congress will do the same thing.

As my colleagues know, a Federal civil lawsuit in too many jurisdictions is little more than a ticket to delay.

The CHAIRMAN pro tempore (Mr. BURR of North Carolina). The time of the gentleman from Texas (Mr. DOGGETT) has expired.

(By unanimous consent, Mr. DOGGETT was allowed to proceed for 2 additional minutes.)

Mr. DOGGETT. Should this bill pass, Mr. Chairman, the delay will not only be for those involved in tobacco class-action suits. Certainly they will be damaged, but every litigant, be it corporate, individual, governmental, that has a claim pending, a legitimate claim in our Federal court system throughout this country, will find the already overwhelmed Federal courts to be logjammed even more.

There are over 4,000 State courts that can handle State class actions compared to a much smaller number of our Federal district courts. If Congress today adds to these cases, the noise we will hear in the background will be the wheels of justice coming to a screeching halt. Tobacco companies will have successfully avoided any real threat of being held accountable, of being personally responsible for the damages resulting from their purposeful deceit.

This Congress failed the American people by failing to approve comprehensive tobacco legislation. Let us not fail the American people once again by trampling on their rights to turn to the courthouse in their own State, in their own locality, when the Congress would not respond.

Mr. Chairman, I would add one further note to my colleagues. Because of the stranglehold, and it is a strong stranglehold, that results from their having well oiled the machinery of Government here in Washington, the

tobacco companies really face little threat in this Congress. We will not be able to get to the floor of this Congress meaningful legislation to reduce youth smoking; and my colleagues need to know that this vote on the amendment offered by the gentlewoman from Texas will probably be the only vote this year by which the American people and the constituency in each district of the Members of Congress will have an opportunity to judge them as to whether they stand with big tobacco and its wrongdoing or they stand with the children and the public health organizations of America to have an effective remedy for such wrongdoing.

I urge approval of the Jackson-Lee amendment.

Mr. ETHERIDGE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to oppose this amendment. I do not understand why we are considering carving out tobacco when this legislation simply ensures that the Federal courts are available to parties involved in massive and complex class-action lawsuits. This amendment, by singling out the tobacco industry, I think establishes a very dangerous precedent. What politically incorrect industry will be singled out next? Will it be alcohol? Fatty foods? Or will it be big oil? Such a precedent, that threatens all legal businesses whose products may be considered controversial by some person or political parties.

But let me make my point very clear today. My main concern lies not necessarily with the manufacturers, but they are important because last time I checked, they are the only people who buy any tobacco from our farmers. It really lies with the tobacco farmers.

Mr. Chairman, farmers in my district have born the brunt of this nationwide campaign against tobacco. Sharecroppers, not shareholders. Let me repeat that. Sharecroppers, not shareholders, are the ones who are paying the heavy price, and they continue to pay. The shareholders are getting their money; the sharecroppers are being punished. Tobacco families, tobacco farmers and their communities have been severely harmed by the ongoing campaign. Over the past 2 years these farmers have lost 35 percent of their gross income. My colleagues can imagine what that has done to their net income, and their communities are suffering.

A recent study by VPI and NC State University in North Carolina clearly demonstrates that the tobacco farmers are bearing the burden of the anti-campaign. The study concluded that these lawsuits are particularly punishing to farmers because they are unable to recoup the losses through price increases, as the manufacturers have done. Instead of punishing manufacturers, we are punishing the very people that we want to help, the farmers, and their communities and their families. If we adopt this amendment and single out tobacco industry, tobacco farmers, Mr. Chairman, not the manufacturers, will continue to carry the heaviest load that we are talking about.

And people stand here and say they want to help. They are punishing the people they want to help. The people in my district, Mr. Chairman, are on their backs right now from a hurricane. They cannot stand any more help from this Congress. They need real help in funding that will go to help them get back on their feet. I oppose this amendment, and I urge my colleagues to do the same.

Mr. BRYANT. Mr. Chairman I move to strike the requisite number of words.

Mr. Chairman, it is interesting to stand here on the floor of this House and listen to the debate and especially on an issue like this that should be dwelling on the issue of fairness versus the very emotional issue on the political incorrectness of tobacco; and some would say, I have heard repeated several times today, that some here on this side of the aisle came to Washington to talk about moving many of the rights back to the States and how this is just the opposite of that. But many of those very same people believe in bigger government, and yet today they are saying that, well, we do not think the Federal Government ought to have a role in this, that it ought to be back in the States.

Mr. Chairman, I say this simply to point out to the public that no one has a monopoly on hypocrisy, if that is what we are talking about here. I think each case has to be decided by its merits, and this case, given the history of our law on diversity and given the statute on class-action lawsuits, and that concept that even big businesses and even big unpopular businesses ought to be treated fairly, and especially if they are interstate, they ought to have that right to avoid the local biases that often come out in local courts, and they have been able to go into court, into Federal court and Federal courts are scattered all throughout the country, it is almost like somehow we are talking about we are denying anyone the right to go to court.

We are not doing that. The Federal courts are open; the State courts remain open, and if they are removed to Federal court, it is a local court in their State, every State has Federal courts; and as I point out in my opening statement, they are probably better equipped to handle these class-action lawsuits because they have law clerks; they have U.S. magistrate judges and all kinds of assistance; they have the experience in complex litigation.

But in the end what we are talking about on this amendment is a carve out, and some have said, Well, you've carved out for securities litigation. Well, the reason we carved out for securities litigation was that we enacted a bill in this Congress a year or two ago that reformed that, that made those changes, so there is no reason to bring this into play as to that subject and cause conflict.

But the last speaker, I want to close my remarks by saying he was familiar with the courthouse, and how the scales of justice is there and how it should be balanced; but I think the key of the lady of justice holding the scales of justice is that she is wearing a blindfold, not that the scales are balanced, and if my colleagues vote for this amendment and carve out a politically unpopular entity such as tobacco and treat them unfairly, different than the rest of them, you have got that lady of justice peeking out from that blindfold, and no longer is justice blind, no longer is justice fair.

Vote against this amendment.

Ms. JACKSON-LEE of Texas. Mr. Chairman, will the gentleman yield?

Mr. BRYANT. I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentleman from Tennessee, and I appreciate both his tone and his work, but I think that if my colleagues might, let me cite for them again from the Conference of Chief Justices who have indicated there is a very fine balance of relationship that they have developed between the Federal court system and the State court system on class actions, and we are not here to try to create an imbalance between large companies or unpopular industries. Frankly my colleagues have already carved out a carve-out for the securities industry, and what we are saying is we do not want to implode the opportunities of victims who have been the victims of tobacco usage and tobacco companies.

Mr. BRYANT. Reclaiming my time, as I explained earlier, we carved out the securities litigation because we have already acted on that. There is no sense in passing something that would be inconsistent or cause any problems.

But, again, I think the point we have got to look at here we are making exception, we are singling out something that is not popular; and again under our system of justice, under our lady of justice, justice should be blind. Even though it is tobacco, even though it is firearms, it should be treated the same as any other company; and we certainly are not closing the doors to the courthouse.

In fact, I have complete confidence in the Federal court system to adjudicate this type of litigation and, in fact, would prefer this type of litigation if this type of court venue, if it is a complex case like a class-action lawsuit.

Mr. Chairman, I think both the plaintiffs and defendants deserve this type of treatment.

Mr. WATT of North Carolina. I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the Jackson-Lee amendment, but both the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE) and Mr. NADLER's amendment really point up the problem with this legislation and what happens when we do not have a central principle that controls when you are going to be in Federal court and when you are going to be in State court and opens you up to efforts to try to pick out one industry or the other and exempt them or not exempt them.

The problem is that there is no central core principle here. We have left the central core principle that our constitutional framework gave to us.

□ 1345

That principle says if there is not something in the Constitution that gives a matter to the Federal Government, that matter is reserved to the States. That is what the constitutional principle is. Once we start to stray away from that constitutional principle, then we do not have a central principle that we are operating from anymore and then we get subjected to this kind of let us make this exception because we do not like this industry or make that exception because we do not like that industry. And we end up with a hodgepodge of jurisdictional standards for when one can get in the State court and when one can get in the Federal court.

Now we have had a long-standing diversity jurisdiction principle that has been at play for years and years and years. It says when someone can get into Federal court; and because the supporters of this legislation do not like that, they start to make exceptions to that principle. And because then people who do not like particular industries do not like that exception then they start making exceptions to the exception, and that is what we are engaged in right now.

The underlying bill is an exception to a long-standing principle. The amendments of the gentlewoman from Texas (Ms. JACKSON-LEE) and the gentleman from New York (Mr. NADLER) want to make an exception to the exception, and none of it makes sense. So what we ought to do is reject the exception to the exception, the Jackson-Lee and the Nadler amendments and any other carve-outs that somebody comes to the floor with during the course of this debate.

More importantly, we ought to reject the underlying bill which is an exception to the generally-accepted rules that we are operating under because then we do not have a central principle if we do not reject the underlying bill.

That is really where we ought to end up on this piece of legislation. So that is why I am rising in opposition to the exception to the exception, but I am also rising in opposition to the bill which is an exception to the rule, and that rule is that if we did not give it to the Federal Government then it is reserved to the State governments, and that is the principle that we ought to be controlled by.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I ask unanimous consent to strike the requisite number of words.

The CHAIRMAN pro tempore (Mr. BURR of North Carolina). Is there objection to the request of the gentlewoman from Texas?

There was no objection.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I know this debate is coming to a close. I could not agree more with my colleague from North Carolina on opposition to the underlying bill, and as well I think it is important to note that this is not a popularity contest. There is no attempt here to select unpopular industries.

I would have hoped that my colleagues had not carved out originally the securities carve-out. I would have hoped they had not carved out the corporate governance carve-out because representatives from the State of Delaware were interested in making sure that those actions stayed in State courts in Delaware developing the massive corporate law of America.

I think in this instance we have a situation where we need to be aware that one-third of high school age adolescents in the United States smoke or use smokeless tobacco, and smoking prevalence still exists among our teenagers. We need to realize that children are being attracted to smoking. What we are simply saying here is not to create an imbalance between unpopular industries and popular, or to create an imbalance between any litigant going into the court of justice, but what we are saying is this legislation will allow one diverse litigant, one, to move a massive class action that has been filed in a State court to a Federal court of which the Conference of Judges in the Federal system have indicated we cannot take it.

In fact, Mr. Chairman, it literally locks the courthouse door because our Federal courts are overwhelmed and understaffed, and we have already seen where tobacco cases have not been certified in the Federal court. And we would not have had the cases that we have had that were filed in Florida and the one filed on behalf of the airline stewards for secondhand smoke. We would have been in an abyss or a crisis or a limbo or a bottomless hole where individual litigants who get their strength from a class action to allow themselves to be able to access, the equity court, the court of justice in State courts, would be denied.

So I would ask my colleagues to consider this not as a bias toward an unpopular industry but a creating of a balance of the scales of justice for those victims who have been closed out of the Court system because they are alone, they are by themselves, they are frail, they have less money and they are not able to access justice.

Class actions are the access for that and this amendment would help those victims of tobacco usage, and I ask my colleagues to support it and to vote against the underlying bill.

Mr. Chairman, I am offering the following amendment to H.R. 1875, The Interstate Class Action Jurisdiction Act of 1999. I am concerned that this bill if left unamended would for the first time, give federal courts jurisdiction over almost all state class action claims, even those involving primarily intra-state disputes over state law. This bill will allow tobacco companies to take state class action claims away from state courts and put them into federal courts over the objections of plaintiffs.

By permitting the transfer from state courts to the federal courts, this legislation will cause indeterminable delay for class action cases against the tobacco industry, both increasing the costs of suing the industry and delaying justice.

My amendment would ensure that this bill does not apply to any class action that is brought for harm caused by a tobacco product. This legislation as currently worded would allow tobacco companies to remove class actions involving state causes of action to federal court. In fact, since the major tobacco companies are principally domiciled in states where class actions are not being brought, "minimal diversity" as defined by this bill will always exist between the plaintiffs and the tobacco companies.

The legislation, therefore, can be said to effectively grant the tobacco industry a free pass to federal court where it will be more difficult for plaintiffs to prevail in class action cases.

My amendment responds to the concerns that many of us have and I urge my colleagues to support this measure.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to House Resolution 295, further proceedings on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE) will be postponed.

AMENDMENT NO. 7 OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 7 offered by Mr. WATT of North Carolina:

Page 7, line 10, strike ''before or''.

Mr. WATT of North Carolina. Mr. Chairman, I have already expressed my

opposition to this bill for a number of reasons, and in the opening debate I also alluded to some internal drafting concerns that I have about the bill. One of those drafting concerns is that the bill allows someone who purports to be a member of a class to come in and remove a case to Federal court before that person is even determined to be a member of the class; before there is a class certification.

The purpose of this amendment is simply to strike two words from the bill. The relevant provision in the bill says this section shall apply to any class action before or after the entry of any order certifying a class. All my amendment would seek to do is to strike two words, ''before or,'' so that at least a person would have to be determined to be a member of the class before that person could pick the lawsuit up and move it to the Federal court.

I am not sure what the objective was to give somebody who is not even determined to be a party to the litigation the right to pick a lawsuit up and move it when they have not even had any role in the case up to that point. So I would encourage my colleagues to support this amendment, although I understand that there may be a substitute for it which I hope I can be supportive of.

AMENDMENT OFFERED BY MR. BOUCHER AS A SUBSTITUTE FOR AMENDMENT NO. 7 OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. BOUCHER. Mr. Chairman, I offer an amendment as a substitute for the amendment.

The CHAIRMAN pro tempore. The Clerk will report the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment Offered by Mr. BOUCHER as a substitute for Amendment No. 7 Offered by Mr. WATT of North Carolina:

Page 7, line 11, insert '', except that a plaintiff class member who is not a named or representative class member of the action may not seek removal of the action before an order certifying a class of which the plaintiff is a class member has been entered'' before the period.

Mr. BOUCHER (during the reading). Mr. Chairman, I ask unanimous consent that the substitute amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. BOUCHER. Mr. Chairman, the amendment of the gentleman from North Carolina (Mr. WATT) would permit a plaintiff to remove a State-filed class action to Federal court only after the State court had entered an order certifying the class.

In my view, the removal opportunity should arise at an earlier time for plaintiffs who are named or representative class members. These plaintiffs should be able to remove at some point before the State court actually enters the certification order.

The substitute to the gentleman's amendment that I am offering would permit named or representative class members to remove prior to the State order certifying the class. Other plaintiff class members could remove only after the certification order is entered.

I want to thank the gentleman from North Carolina (Mr. Watt) for his work with the sponsors of the legislation on this aspect of the removal process. I am hoping that the substitute that we are offering will be acceptable to the gentleman in addressing his concerns, and I would be happy to yield to him for his comments.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. BOUCHER. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentleman from Virginia (Mr. BOUCHER) for yielding.

Mr. Chairman, I want to tell the gentleman from Virginia how much of a pleasure it has been to try to work toward something that accommodates his concerns and accommodates my concerns. I believe that this amendment, while it does not go all the way to the point that I was trying to get us to, reaches a reasonable balance between the two approaches. It at least does not allow somebody to walk in off the street, unknown to the litigation, and pick it up and move it. One has to be a named class representative or a named plaintiff to move it before they have the right to remove, and I think this accomplishes that purpose.

I would encourage my colleagues to support the substitute; and if the substitute passes, then obviously that would take precedence over the underlying amendment which I have offered.

Mr. BOUCHER. Mr. Chairman, I thank the gentleman from North Carolina (Mr. WATT) for his remarks. I would be pleased to yield to the prime sponsor of the underlying bill, the gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. BOUCHER. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman from Virginia (Mr. BOUCHER) for yielding.

Mr. Chairman, I want to commend the gentleman from Virginia (Mr. BOUCHER) for what I think is a very appropriate secondary amendment to the amendment of the gentleman from North Carolina (Mr. WATT), and commend both gentlemen for working this out. We can certainly accept this amendment, and we urge our colleagues to vote for it.

Mr. BOUCHER. Mr. Chairman, I thank the gentleman from Virginia (Mr. GOODLATTE) for his support, and I would encourage the committee to approve the substitute.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Virginia (Mr. BOUCHER) as a substitute for the amendment offered the gentleman from North Carolina (Mr. WATT).

The amendment offered as a substitute for the amendment was agreed to.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from North Carolina (Mr. WATT), as amended.

The amendment, as amended, was agreed to.

AMENDMENT NO. 2 OFFERED BY MR. FRANK OF MASSACHUSETTS

Mr. FRANK of Massachusetts. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. FRANK of Massachusetts:

Page 9, strike line 6 and all that follows through page 10, line 2, and insert the following:

(e) PROCEDURE AFTER REMOVAL.—Section 1447 is amended by adding at the end the following new subsection:

''(f) If, after removal, the court determines that any aspect of an action that is subject to its jurisdiction solely under the provisions of section 1332(b) may not be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, it shall remand that aspect of the action to the State court from which it was removed. In such event, that State court may certify the action or any part thereof as a class action pursuant to its State law and such action cannot be removed to Federal court unless it meets the requirements of section 1332(a).''.

Mr. FRANK of Massachusetts. Mr. Chairman, this is the truth in labeling amendment. This bill was originally presented to me in the previous Congress as an effort to have more rationality as to whether or not a particular action ought to be tried at the Federal or the State level, and I agreed with that.

Indeed if this amendment were adopted, I could be supportive of the bill, would be supportive of the bill. I had been a sponsor before, until this particular piece of it evolved. I am not sure where it came in, but here is the problem: We now have very technical rules about what gets someone in a Federal court and what gets someone in a State court. I think it makes sense to change that so that where the bulk of the plaintiffs and the bulk of the defendants and the bulk of the issues are in one State it stays in the State court, and where there is genuine factual diversity it goes to Federal court. That was the legislation I was prepared to support.

There is a piece of this, however, that I think is, to many of the sponsors, a central part of the legislation and it says this: If a class action is filed in State court and can be, under the terms of this bill, removed, even

though it did not meet the old technical terms for removal but would meet our new more substantive test for going into Federal court, if a Federal judge found that this particular class action did not meet the rules for class action under the Federal rules it could not be brought as a class action.

□ 1400

It could then be returned to the State, but not as a class action. In other words, this piece of the bill is not to see that certain class actions are litigated at the Federal level rather than the State level. I am aiming at a piece of the bill that seeks to prevent certain class actions from being heard at all.

What came out of the debate is this: some Members of the majority are disappointed in some States. I guess they are kind of like parents whose kids have gone bad. I know they are all for States' right. I know they talk about how much they support States' rights and do not want to see a Federal override. But the problem is, those darn States will not always do what they are told. Some of those States actually allow class-action suits that some businesses do not like, and there is unhappiness over the willingness of some States to do this.

Mr. Chairman, I will say this. There is a certain delicacy on the part of my colleagues, they do not like to mention the States. It is one thing to condemn the States; it is another thing to actually mention which ones. So you probably will not hear during the course of the debate any actual States mentioned. There are a few. Off the floor maybe we can whisper some names.

But the problem they have is, they believe some States are too lax and too willing to allow class actions, so part of the purpose of this bill is not simply to get class actions litigated in Federal court rather than State court, but to keep them from being litigated as class actions at all. That seems to me to be a grave error.

This amendment is very simple. This amendment says that if one gets it removed under the general provisions of this bill, and this bill will make it easier to remove from State to Federal court, and I support that part of it, the amendment says if one gets it removed and a Federal judge says, no, one cannot have it as a class action, then one can go back to State court and have it as a class action in State court. In other words, one's choice is one wants it to be a Federal class action or a State class action, and that I think the bill addresses correctly. But using this as a way to prevent class actions at all is an error, and only this amendment will keep this from happening.

What the amendment says is that if a Federal judge rules that it cannot be a class action, one has the opportunity of going back to the State from which it was removed and maintaining it as a class action. I do not think it is appropriate for us to simply say, as this bill otherwise will after this amendment, hey, some of you States have not gotten it right and you States are allowing class actions that should not be class actions and we, the Federal Government will step in.

This is a proposal to substitute the wisdom and discretion of the Federal courts for State courts as to whether or not class actions ought to be maintained at all.

As I said, and I want to be very clear, to a bill whose purpose it is to have certain actions tried in the Federal rather than a State court because it makes more sense for the class action to be tried there, I am supportive. But a bill whose purpose it is to prevent any class action at all, and that is part of the purpose of this bill, that, I think, is in error.

This amendment would return the bill to what it was advertised as to me: an effort to put class actions where they ought to be, but it would remove from the bill that provision that says, some States have been imprudent in allowing class actions that should not be allowed. I do not think that is a wise decision for the Federal Government to make. We certainly have had no record for it and if, in fact, we are going to have legislation passed that rules that some States have been imprudent, let us have hearings. Let us give those States a chance to defend themselves.

This is a gravely mistaken assault on States who have not been given a chance to defend themselves.

Mr. GOODLATTE. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this amendment would defeat the whole purpose of H.R. 1875. I must strongly disagree with the gentleman from Massachusetts (Mr. FRANK), with regard to the issue of States' rights. It is not a States' rights issue to allow one State court judge to determine the law in 20 or 30 or 40 other States, and that is what happens now when nationwide class-action lawsuits with tens or hundreds of thousands of plaintiffs cannot be removed to Federal court because of this flaw that has existed in our diversity rules that says that a $75,000 slip and fall involving parties between two States can be removed to Federal court, but a multimillion dollar or multibillion dollar lawsuit involving tens of thousands of parties cannot be removed to Federal court.

To allow one State court judge in one county in one State to determine the laws of a multitude of other States; to allow a judge in the State of Alabama to interpret the laws of New York and New Jersey and Pennsylvania and California and Texas is wrong, and that is what this bill is designed to do.

If the gentleman's amendment passes, the effect will be to say, once the matter is removed to Federal court, if the Federal court does not believe that the legislation constitutes a class action and refuses to certify it as a class action, then it would go right back to the State court and they could proceed with their lawsuit just as if nothing had ever happened. It would defeat the entire purpose of eliminating forum shopping and it would defeat the entire purpose of making sure that State court judges do not interpret the laws of a multitude of other States.

The whole purpose is to allow the removal of more interstate class actions to Federal courts where they are most appropriately heard. This amendment would make that change worthless.

The amendment would constitute a full endorsement, not a correction, of the rampant class-action abuse that is occurring in State courts. When a Federal court denies class certification in a case, it is typically because litigating the case on a class basis would likely result in a denial of a class member's or a defendant's due process rights or basic fairness principles. This amendment would invite State courts to overrule such Federal court determinations; it would invite State courts to advance class actions that a Federal court has determined would deny due process rights or be unfair to unnamed class members.

The amendment is based on the myth that most States have class-action rules radically different from the Federal class-action rule, and that if a Federal judge judges that a class case may not proceed as a class action under the Federal rule, counsel should be able to take their case back to State court and try their luck under the State rule. In reality, the vast majority of States have class action rules that track the Federal court class-action rule, or have held that the Federal court precedence should guide State courts in making class certification determinations. The problem is that when the rules are largely the same, local judges in many States do not rigorously follow these rules, and their misguided class certification determinations are not readily subject to proper review.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I thank the gentleman for that statement, because I think that makes it clear what we are talking about.

The gentleman has just said that the problem is that the rules are the same but a lot of local, i.e. State, judges, are misguided. So this is not a statement that the Federal judges have superior wisdom; and it is, as the gentleman said, an effort to prevent the misguided actions of State judges who cannot be

trusted to carry out their own State laws.

Mr. GOODLATTE. Mr. Chairman, reclaiming my time, the legislation does not make any distinction between the wisdom of State court judges in general or Federal court judges in general; it says that State court judges should not be determining the law of other States.

Mr. FRANK of Massachusetts. Mr. Chairman, if the gentleman would continue to yield, the gentleman just referred to misguided State judges. He acknowledges that the rules are largely the same, and what he is saying is, the Federal judges will be guided and they will have to guide those misguided State judges. It is okay to think that.

Mr. GOODLATTE. Mr. Chairman, again reclaiming my time, all I am saying to the gentleman is that we should not allow anybody to have two bites of the apple, and that is what the gentleman's amendment provides for.

The amendment would create enormous inefficiencies and a parade of abuses. In particular, if a defendant fights to defeat class certification and wins in Federal court, it will have to turn around and mount the fight all over again.

The amendment is premised on the false assumption that class proponents will not get a full opportunity to obtain class certification under the current bill. They will. As presently drafted, the legislation will allow litigants multiple chances to obtain certification of proposed classes after removal to Federal court. If the first class proposal in a removed action fails, nothing in this bill precludes the class representatives from making revised class proposals to the Federal court.

The CHAIRMAN. The time of the gentleman from Virginia (Mr. GOODLATTE) has expired.

(By unanimous consent, Mr. GOODLATTE was allowed to proceed for 1 additional minute.)

Mr. GOODLATTE. Mr. Chairman, even after the case is dismissed in Federal court, it can be refiled in State court. After the class certification fails, it would not preclude the plaintiff from offering additional class proposals. They just cannot go back in with the same class proposal, because that class has not been certified in Federal court.

Suggestions that H.R. 1875 would federalize all class action rules ignore the current situation, and it ignores the situation that I referred to earlier. It has been suggested that this amendment would prevent H.R. 1875 from federalizing class action rules. In reality, the amendment would perpetuate the federalization of class action rules that is occurring now. At present, a handful of State courts dictate Federal class action policy.

By taking an ''anything goes'' approach to class actions, those few State courts have become a magnet for class actions. Such courts hear a disproportionate number of multi-State and nationwide class actions because they are very lax about what they will certify for class treatment. Passing this bill will standardize the process and make sure that no one State court drives the policy.

Oppose this amendment and support the bill.

Mr. BOUCHER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I will be brief in stating my opposition to this amendment. If the amendment is adopted, the basic reform that we are seeking in this legislation simply would not be achieved. Some cases simply should not be certified as class actions, either in State or in Federal courts. Federal Rule of Civil Procedure 23 is narrowly drawn so as to protect the normal rights of both plaintiffs and defendants. Under rule 23, cases that are overly broad will not be certified as class actions.

When cases are denied class action status, all of the individual members of the purported class are then free to file their individual actions for damages. And so, in the failure of class certification, absolutely no one is denied the opportunity to seek recovery for whatever damages they may have incurred.

If the amendment of the gentleman from Massachusetts is adopted, any case which, because of its broad scope, fails to meet the class certification requirements of rule 23 of the Federal rules, and therefore, is dismissed as a class action in Federal court, could then be certified as a class action in the State that has looser certification standards. That State would then be the final arbiter of whether or not the class would be certified, because removal to the Federal court would then no longer be allowed.

The national cases that involve the residents of many States that are our concern and that underlie this legislation would, under this amendment, still be heard in State courts, and so our basic purpose would not be achieved. The reform that we are seeking would not be put into effect, and for that reason, I urge the defeat of the amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. BOUCHER. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I thank the gentleman for yielding, because I want to straighten something out now.

The previous speaker said that some of us were operating under a myth, but the myth was just propagated by my friend from Virginia, not by us. I would say to my other friend from Virginia, he accused the sponsor of this amendment of holding the view that there were different State and Federal standards for certifying, and he said that was not the case, it is just that the Federal Government is better at this than the State judges. But as the gentleman from Virginia now standing who graciously yielded to me just said that some of the States have looser standards.

So I do want to point out that there appears to be some difference between the two gentlemen from Virginia here.

Mr. BOUCHER. Mr. Chairman, reclaiming my time, let me say that it is true that most of the States have standards that are roughly coincident with rule 23 of the Federal Rules of Civil Procedure, but there are some States that have not adopted that rule. There are some States that, in fact, do have broader and looser standards than Federal rule 23; and in many of the instances where abuses have arisen, it is because of those somewhat broader standards.

We have a whole series of cases that the gentleman and I discussed when this matter was in the committee where the State that is certifying a class will be applying its law in such a way as to bind all of the Members of the class and make sure that that particular State's law dominates the decision, notwithstanding the fact that in the State of the residents of many of those individuals, the law is very different. That reversed federalism, which does enormous damages to our traditional principles of federalism is yet another abuse that we are seeking to remedy.

Mr. FRANK of Massachusetts. Mr. Chairman, if the gentleman will again yield, I just wanted to point out that that argument, that there are some States with different standards, is contrary to the argument given by our other colleague from Virginia. I just wanted to point that out. He said we were operating under the myth that there were these States with different standards, and that, in fact, the standards detract from each other.

The gentleman from Virginia (Mr. BOUCHER) is now acknowledging that there are some States with different standards, and I think that is frankly a better way to go than to have the argument that we previously heard that there were these misguided State judges who were misapplying the rules.

In any case, I would say this. I would like to have a hearing and call forward officials from those States; I think it would be useful. Which States are we talking about? Which are the States that are abusive? We ought to be able to know which States we are talking about, and I think we ought to give those States, because I do not remember hearing where we asked those States to come and justify their loose procedures.

□ 1415

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. BOUCHER. I yield to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding, Mr. Chairman.

Would it not be possible that both facts are true; that in some States the certification process is different than the standards followed in the Federal courts and followed by most of the other States, and it could also be true that in some States some judges do not follow standards that are loosely applied?

Mr. BOUCHER. Reclaiming my time, Mr. Chairman, I think the gentleman from Virginia is precisely right. Even in those States that have standards that approximate Federal rule XXIII, there is a divergence oftentimes in the courts of that very State in terms of how those standards are applied.

Oftentimes, the States do not offer the right of interlocutory appeal on the pure question of class certification. So for the defendants to have an opportunity to challenge the application of that particular State's certification rules, the entire process of the trial has to be undertaken, has to be concluded. That is a waste of time, resources, and money for all parties concerned.

Mr. FRANK of Massachusetts. Mr. Chairman, if the gentleman will yield further, I agree that intellectually both can be true.

I would simply point out to the gentleman from Virginia, he is one who referred to one of those truths as a myth. The gentleman from Virginia first declared it was a myth, and then announced it was true. I am willing to wait for his judgment as to which he means.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to point out that as we weigh the intelligence and ability of the Federal judges versus the State judges, it is the Federal judges and the Judicial Conference of the United States that do not want this bill.

They have used the most delicate language imaginable: ''Concern was also expressed about the conflict between these provisions of the bill and long-recognized principles of Federalism.'' Get it? That is what they are saying: Please do not give us this. They demean the State court judges, but the Federal judges to whom they are giving this do not want it.

But since they insist on giving it to them, the Frank-Conyers-Berman-Meehan amendment, this amendment, merely gives the State court the opportunity to reject or accept a class certification determination.

The debate that has been going on here assumes that anything that comes back to the State court is going to automatically be certified as a class action. The State court has the option of determining whether there will be a certification. They may well turn it down. What it does do, this amendment, is to stop the merry-go-round effect of always allowing any State court determination to be removed to the State court.

So this amendment provides simply that if, after removal, the Federal court determines that no aspect of an action that is subject to its jurisdiction may be maintained as a class action under rule 23, the court shall remand the class action to the State court, without the opportunity to be removed again to the Federal court. The State could then proceed with a class certification determination.

After the determination, if the district court determines that the action subject to its jurisdiction does not satisfy the rule 23 requirements, then the court must dismiss the action. This has the effect of striking the class action claim. While the class action claim may be refiled again, any such refiled action may be remanded again if the district court has original jurisdiction.

Therefore, even if a State court would subsequently certify the class, it could be removed again, creating a revolving door between the Federal and State court.

Mr. Chairman, all we are doing is stopping the revolving door action. It is a modest improvement to a measure that is likely not to be kindly received by the administration. This would make it a little bit better.

This provision unfairly prohibits class action lawsuits from being certified by State courts under the State class action rules, which could be more lenient than Federal rule 23. As a result, individual actions could be the only recourse for the plaintiff, and this will eliminate the benefits of a class action in the first place. This is why class actions were created, to seek compensation as a class from the industry because individual lawsuits are too costly.

I urge my colleagues to support the amendment, which will allow the Federal courts the first opportunity to review a class action, but not cut off other class action rights in the State courts.

Mr. MEEHAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think this amendment addresses, really, the central point of this debate: Is this a bill about banning all kinds of class actions, or is this debate really about making a change in the diversity rules?

The proponents of this bill argue that this bill represents a minor change in the rules of civil procedure and has no impact on the meritorious class action lawsuits. The way the bill is drafted, however, belies that claim. Instead, it would prohibit the formation of almost all State class actions.

This amendment would correct that problem by only permitting the defendant to remove a class action suit to Federal court once. If it is removed and does not receive Federal certification, then the class can go forward with their class action on the State level if and only if they succeed in receiving certification under the rules of that particular State.

By ending the possibility of repeated removals, this amendment ends the merry-go-round of removals and preserves meritorious State claims actions. Without this amendment, almost no class actions would be able to form on the State level without defendants being able to repeatedly whisk them away to Federal court.

The goal of this legislation is supposed to be a technical change to the diversity jurisdiction rules, not a preclusion of all class action lawsuits. Unfortunately, the way this bill is drafted clearly demonstrates that it intends to preclude class actions, not simply correct diversity jurisdiction problems.

Mr. Chairman, I urge support for this amendment.

Mr. MORAN of Virginia. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, on the face of it, this may seem to be a corrective measure. The problem is that this is a classic loophole. There are a handful of States that have lax certification standards.

Some might argue that that is what this legislation is all about, that there are certain States that are havens for frivolous class action lawsuits. What this does is to say, you play by the rules, you go to the Federal court, the Federal court finds that your suit is without sufficient merit, and then if you lose, you have the recourse to go right back to the States with the most lax certification standards and start the case over again.

That is the problem with this. If we were talking about having an opportunity to appeal to a Federal court, that would be a more legitimate alternative and one that I think would have merit, personally. I cannot speak for the other sponsors, but I think that might have had merit. This, what this does is to open up a loophole. It is a loophole that in fact will become the standard course of action on the part of plaintiff's attorneys who have figured out how to best abuse the existing system.

So that is why I have to oppose this legislation. Even though my very good friends and people whose judgment I highly respect have offered this amendment, I am afraid that perhaps unwittingly, I am sure unwittingly, they are offering legislation that will open up a loophole that will really nullify the intent of this corrective reform legislation. For that reason, I really think our colleagues should oppose it.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. MORAN of Virginia. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I would just ask my friend, in his experience, has he ever heard himself or any other Member refer flatteringly to a Member whose amendment he intended to support?

Mr. MORAN of Virginia. Actually, not. We offer the most ungenuine flattery to those who we intend to oppose most vigorously. But that does not mean that I did not mean it when I say that the gentleman is a friend and a very credible and respected colleague, I say to the gentleman from Massachusetts. It is just that the gentleman's legislation does not make sense.

Mr. FRANK of Massachusetts. In the future, I would trade three compliments for one vote.

Mr. MORAN of Virginia. The gentleman will not get that. He will have all the compliments he wants, but I certainly would not vote for this legislation. I would not encourage any of my colleagues to vote for it, either.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts (Mr. FRANK).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. FRANK of Massachusetts. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to House Resolution 295, further proceedings on the amendment offered by the gentleman from Massachusetts (Mr. FRANK) will be postponed.

AMENDMENT NO. 6 OFFERED BY MS. WATERS

Ms. WATERS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 6 offered by Ms. WATERS:

Page 10, line 4, strike ''The'' and insert ''(a) IN GENERAL.—The''.

Page 10, lines 5 and 6, strike ''date of the enactment of this Act'' and insert ''date certified by the Judicial Conference under subsection (b)''.

Page 10, insert the following after line 6:

(b) CERTIFICATION BY JUDICIAL CONFERENCE.—The Judicial Conference of the United States shall certify in writing to the Congress the first date on or after the date of the enactment of this Action which the number of vacancies of judgeships authorized for the United States courts of appeals, the United States district courts, and the United States Court of Federal Claims, is less than 3 percent of all such judgeships.

Ms. WATERS. Mr. Chairman, this amendment provides that this bill, H.R. 1875, would take effect only once the Judicial Conference of the United States has certified in writing that fewer than 3 percent of Federal judgeships remain unfilled.

I remain firm in my opposition to H.R. 1875 because the bill as designed will dramatically increase the workload of the Federal judiciary. The bill's very purpose is to transfer to the Federal courts a large portion of class action lawsuits currently handled by State courts.

The current workload of the Federal judiciary is already hampered by the backlog of cases, largely due in part because of low-level drug crimes prosecuted under the ill-conceived mandatory minimum drug sentence. The over-federalization of crimes, coupled with the judicial vacancies on the Federal bench, results in meritorious civil claims not being heard.

I come from a people who are all too familiar with the maxim, ''Justice delayed is justice denied.'' On May 11, 1998, the conservative Supreme Court Chief Justice Rehnquist noted that the Senate is ''moving too slowly in filling the vacancies on the Federal bench.'' He also criticized the Congress and the President for ''their propensity to enact more and more legislation, which brings more cases into the Federal court system.''

He said, ''We need more vacancies to deal with the cases arising under existing laws, but if Congress enacts and the President signs new laws allowing more cases to be brought into Federal courts, just filling the vacancies will not be enough. We need additional judgeships.''

Mr. Chairman, allow me to detail the judicial vacancy crisis. Currently, there are 68 Federal judicial vacancies, or approximately 8.5 percent of the Federal judicial positions. On average, Federal District Court judges have 398 civil filings pending.

The Senate in 1999 has confirmed only seven judges. Forty more await action, either on the floor or in the Committee on the Judiciary. Yet, Mr. Chairman, Senator TRENT LOTT has clearly indicated that filling judicial vacancies is not a priority. Last week, in regard to the nomination of a judiciary candidate, the Senator stated, ''There are not a lot of people saying, give us more Federal judges.'' He further said, ''I am trying to move this thing along, but getting more Federal judges is not what I came here to do.''

Meanwhile, 23 vacancies are categorized by the Judicial Conference as judicial emergencies, meaning either that the court in question is facing a burdensome caseload, or that the slot has been vacant for 18 months. As of June 1, fully one-fourth of the positions on the Ninth U.S. Circuit Court of Appeals had not been filled. The Third Circuit has a whopping 20.3 percent judicial vacancy.

Mr. Chairman, the failure of movement on the judicial nominations to the Federal court borders on malpractice.

□ 1430

Clearly, the majority has decided to play political football with the President's nominees at the expense of the American people who have cases that are in need of resolution.

I understand that this body does not have the power to order the other body to confirm the judicial nominees. However, this amendment would provide that the judiciary not undertake additional cases unless there are enough judges to address the suits before the courts.

This amendment is reasonable and is one that should be supported. Mr. Chairman, these numbers speak for themselves. I urge my colleagues to support this amendment.

Let me just conclude by saying I do not have to make a further case. We all know this. The gentleman from Virginia (Mr. GOODLATTE) on the other side of the aisle is even smiling because the case is so clear.

Here we are talking about putting an additional burden on our Federal courts, and we cannot fill the vacancies, and we have no movement from the very people who claim that this must be done in the interest of fairness.

Well, I do not think they can make a case for this. I do not think anybody believes this. They do not even believe it. They know that the courts are backed up, and they know that even those in their own party have spoken about this terrible problem that we have with these vacancies.

Do not try and overburden these courts even more and back up the cases. If they really want to do something, they will get in their conference, and they will urge Senator LOTT and the others on the other side of the aisle to move these judgeships so we can take care of the cases that are already there.

Mr. GOODLATTE. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I must say to the gentlewoman from California (Ms. WATERS) the reason I was smiling is because, to state it kindly, this amendment is sort of a sneak attack on the bill, because it has the effect of gutting the bill.

What her amendment provides for is the bill does not go into effect until the Federal court vacancies are below 3 percent. Well, guess what? In the last 15 years, the Federal court vacancies have never been below 3 percent, including a number of instances where there have been Democratically controlled U.S. Senates and Republican Presidents.

So I do not think we should inject ourselves into that debate going on over in the Senate. In fact, the time that the vacancy rate was the highest was just before when President Bush went out in 1991. Instead of the over 8 percent vacancy rate that the gentlewoman cited that exists today, the vacancy rate in 1991 was 16.4 percent.

So there is no doubt that the purpose of this amendment is simply to defeat the legislation; and, therefore, I strongly oppose it.

Ms. WATERS. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I am delighted to yield to the gentlewoman from California.

Ms. WATERS. Mr. Chairman, would the gentleman from Virginia like to substitute the 3 percent for any number that he thinks is fair and reasonable?

Mr. GOODLATTE. No, Mr. Chairman. Reclaiming my time, I must say that I do not want to inject us into that dispute going on between the Senate and the President for this legislation or any other legislation we have on the floor. This legislation should stand on its own merits, and it does.

One of the concerns addressed is that somehow we are overloading the Federal judiciary. But let me point out that the concern fails to look at our judicial system as a whole.

One of the reasons we need this bill is that many of our State courts are not equipped to deal with these massive complicated class action cases. Indeed, many State courts have crushing case loads and far less staffing, such as magistrate judges and law clerks and other staff, available to manage such cases.

Civil filings in State courts of general jurisdiction have increased 28 percent since 1984 versus only 4 percent increase in our Federal courts. By barring interstate class actions from Federal court one is not solving any problem. One is just keeping these cases before courts that cannot deal with them effectively and fairly.

This concern also ignores the fact that the number of diversity jurisdiction cases being filed in Federal court is going down dramatically. During the 12-month period ending March 31, 1998, diversity jurisdiction case filings in Federal courts fell 6 percent. Through the end of 1998, the decrease is even more dramatic.

This concern also ignores the fact that, since 1990, the number of Federal district court judgeships that Congress has authorized to deal with the workload has increased 12.3 percent to 646 judgeships and that the number of senior judges with staff who are now assisting with the case load is up 64 percent, now 276 judges since 1985.

This concern also fails to take account of the fact that this bill actually has the potential to reduce judicial workload. At present, when identical class actions are filed in Federal and State courts all over the country, as often occurs, there is no mechanism for consolidating those cases before one judge for efficient uniform treatment. So numerous different judges are dealing with the same cases, processing the same issues, and all dealing with the same problems.

However, if these cases were in Federal court, all of those cases would be consolidated before one judge who could deal with the issues once and be done with it.

The opponents' arguments also do not take account of the fact that many completely frivolous lawsuits are being filed because attorneys know they can get away with it before certain State courts. I doubt that many of these wasteful suits would be filed if the attorneys know that they will be facing a Federal district court judge.

Finally, I note that this amendment effectively states that we will let interstate class actions into Federal court if they have the time. That is horrible policy.

What we are talking about here is a right conferred to those engaged in interstate commerce by Article III of the Constitution to have access to our Federal courts to avoid the biases that might be encountered in State courts.

When it comes to criminal rights issues, we do not say to defendants they can have them if the court has time. When it comes to civil rights cases, we do not say that plaintiffs can have access to Federal courts if they have time. Why should this be any different?

Mr. Chairman, I urge opposition to this amendment.

Mr. MORAN of Virginia. Mr. Chairman, I move to strike the last word.

Mr. Chairman, the problem with this legislation, and it is not a problem with the intent whatsoever, and I respect the intent that we do not want to overburden Federal judges so that they cannot judiciously consider every case before them, but the problem is that we are passing legislation that is intended to pass the test of time. We are passing it presumably for generations to come.

So we can very well have a situation where we might double, triple, quadruple the number of Federal judges. We could have more Federal judges than we would ever need. But if 97 percent of those judges are the maximum slots that we can fill, if at any time we have a 3 percent vacancy, no matter what the total number of judges is, then we would say no class actions can be filed at the Federal court in terms of the class actions that we are trying to deal with. It has no set number.

So we could deal with the situation where we could have twice, three times the number of Federal judges we have today, and still this amendment would be operable, and one would not be able to implement this amendment because one did not have 97 percent of the slots filled even though many of those slots might one day be in excess of the need that was actually required.

That is the problem with the legislation, not the intent, but the possibility that this might create a situation that, in fact, was irrational and that, in fact, would undermine the intent of the legislation.

Ms. DEGETTE. Mr. Chairman, will the gentleman yield?

Mr. MORAN of Virginia. I am happy to yield to the gentlewoman from Colorado.

Ms. DEGETTE. Mr. Chairman, does the gentleman from Virginia (Mr. MORAN) ever know of a situation where we have added more Federal judges when we did not need them in our Federal system? Have we ever actually added Federal judges when the case loads did not warrant it?

Mr. MORAN of Virginia. Mr. Chairman, I would say to the gentlewoman from Colorado that we are not passing legislation to serve the interests of the past. We are passing legislation to serve the interests of the future. So what has been the case in the past is not as relevant as what might be the case in the future.

It is very well possible that we may substantially increase the number of Federal judges and then, just because we have a 3 percent vacancy, the intent of this legislation is essentially null and void. That is not a situation that I am sure my colleague would want to create.

Ms. WATERS. Mr. Chairman, will the gentleman yield?

Mr. MORAN of Virginia. I am happy to yield to the gentlewoman from California.

Ms. WATERS. Mr. Chairman, the question was asked, but let me just frame it a little bit differently. Has there ever been a time in the history of this Nation that the gentleman from Virginia can identify when we were overstaffed in the Federal court?

Mr. MORAN of Virginia. Mr. Chairman, again, I would say to the gentlewoman from California, my friend and respected colleague, that what has happened in the past, while it might be precedent, is not as relevant to this legislation as what will happen in the future. We are not passing legislation to apply to the past. We are passing legislation to apply to the future.

I would hope that this Congress, in concert with the Senate, would in fact increase the number of Federal judiciary slots to meet the need. Even if it exceeded the need, if in fact it was a 3 percent vacancy which might be rational at some point in time, then it would nullify this legislation. That is not a situation I am sure that my colleague would want to create.

Ms. WATERS. Mr. Chairman, will the gentleman yield further?

Mr. MORAN of Virginia. I yield to the gentlewoman from California.

Ms. WATERS. Mr. Chairman, certainly the gentleman does not believe that we are attempting to pass legislation for the past.

Mr. MORAN of Virginia. That is right.

Ms. WATERS. Mr. Chairman, we refer to the history of the court, the fact that it has never been overstaffed, that the vacancy problem has grown because we have the documentation that shows that we need more and more judges to take care of the case loads that they are now confronted with.

So the idea of the legislation is not to legislate for the past, but certainly documentation and information that indicate the path that it has traveled in the past would be relevant to the legislation that we are attempting to pass today.

Mr. MORAN of Virginia. Mr. Chairman, reclaiming my time, if the gentlewoman wants to propose legislation to substantially increase the number of Federal judiciary positions, I would cosponsor that legislation in a New York minute or a Los Angeles minute. I certainly think we ought to increase the number of Federal judges, but I do not think we should pass this legislation.

Ms. WATERS. Mr. Chairman, will the gentleman yield?

Mr. MORAN of Virginia. I yield to the gentlewoman from California.

Ms. WATERS. Mr. Chairman, rather than legislation that would increase the number of judgeships, could the gentleman kindly say to the people he is supporting on this legislation to urge the Senate and the Republican leadership to simply do their job.

Mr. MORAN of Virginia. Mr. Chairman, I represent the people of the United States presumably. I appreciate the gentlewoman's comments.

Mr. BRYANT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to this amendment. I think it is not a good idea to tie the receipt by the Federal court of cases based on the number of judges that they have.

It has been pointed out just in some discussions about this here that, what happens if we have pending cases and the percent rises above the 3 percent, is that then that we have to move those cases out? It just is very complicated and most unusual.

But what I would like to do at this point is simply bring some context to this debate on Federal judges. The United States district judges are the judges that these cases first come to. We have appellate judges beyond that up to the Supreme Court.

But we are talking about the district court judges that would hear these cases. Currently, there are 636 United States district judges across the country generally broken down among 93, I think it is 93 districts. We have 93 U.S. attorneys. It is 93 or 94, somewhere in that number. We have 636 district judges of which there are 30 district judges pending in the Senate. There are 12 vacancies where the President has not submitted any names. So roughly 42 pending and 636 in place.

If we average that out, again this is purely an average over the 93 districts, we see somewhere between six and seven judges per district, and something less than one-half a judge short in each district.

So the numbers are not quite as dramatic as one might argue here. We are at roughly 95 percent right now. It looks like there is enough blame to go around on both sides, with the President not submitting names and the Congress not acting to account for the 42 different judges.

But, again, the underlying law, the underlying amendment itself is not good, and I urge my colleagues to vote against that.

Ms. DEGETTE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the legislation before us would take another step in overwhelming our Federal court system. The legislation will also serve to weaken the ability of consumers to enforce consumer health and safety, environmental, and civil rights laws.

□ 1445

For these reasons and others, I will oppose the legislation. But if we are going to pass the legislation, the very least we can do is pass this important amendment to protect the Federal court system from being further taxed.

Congress' responsibility vis-a-vis the courts is funding the judiciary, creating the appropriate number of Federal courts, and filling Federal vacancies, and maintaining a delicate balance between what should be a Federal issue and what should properly be addressed in the State courts. Now, how are we doing on these issues? Contrary to what we have just heard, the House, for example, provided the Federal court system with around $240 million less than that requested by the administration. With reduced funding, the court certainly cannot handle additional caseloads, as this bill calls for.

What happens in the Federal courts, as someone who was just practicing in them as recently as 3 years ago, and rightly so because of speedy trial concerns, criminal cases take precedence to civil cases. So all of these civil cases we are moving to the Federal courts will simply languish if we do not have Federal judges to hear them.

As we have heard, the Federal court system has 64 vacancies currently and anticipates 17 more vacancies shortly. Regrettably, many of these vacancies are concentrated in districts where, as my colleagues have also heard, we have judicial emergencies. What does this mean? At its March 1999 session, the Judicial Conference of the United States said that judicial emergency means as follows: any vacancy in a district court where the waited filings are in excess of 600 per judgeship, or any vacancy in existence more than 18 months where the waited filings are between 430 to 600 per judgeship. And it goes on.

Six hundred per judgeship. And all of the proponents of this bill are saying, well, we need to move the more complex cases to Federal Court because the judges will have time to hear them. If we do not fill these open judgeships, we will not have time to hear these complex cases.

In my own district of Colorado, not the largest judicial district in this country, we have one open judgeship that has been open for almost 2 years. We have two more coming up, and we have another coming up in the 10th Circuit. This is in a very small judicial district. And this plays havoc with the ability to hear any case whatsoever.

We can put the blame on whoever we want. We can put the blame on the White House. We can put the blame on the Senate or whoever, but the point is the people who are constitutionally required in this country to appoint judges need to do so before we can have true justice for anybody in either a civil or a criminal case, but most especially in the civil cases that are languishing now in our courts, the civil rights cases, the consumer cases, the complex environmental cases. We need to fill these judgeships before we can put even more cases into those courts.

So I urge my colleagues, let us put some impetus into filling these vacancies. Let us pass this amendment, at the very least, if we are going to pass this legislation.

Mr. BONIOR. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment by the gentlewoman from California (Ms. WATERS) and the gentleman from Massachusetts (Mr. DELAHUNT).

We have heard in this discussion that the vacancy rate in Federal courts is approximately 9 percent today. And of course when that happens, we end up with a stacking of cases. So what we have here is the Republicans blocking appointments to fill the vacancies, to lessen the burden of the workload. And as a result of that blocking, we have stacking. We have blocking and stacking, blocking and stacking.

And now, on top of all of that, the proposal in the bill seeks to stack even further against those who need a place where they can raise their issues of social conscience, of economic justice, of environmental concerns, and consumer concerns.

Mr. Chairman, some years ago, hundreds of people in the State of Washington fell ill, seriously ill. Many of them began to convulse uncontrollably, others suffered from kidney failure and, in fact, three children died. The public health officials searched frantically to find the cause of this epidemic, and they soon found it. The culprit, of course, was deadly E. Coli bacteria in undercooked hamburger that was sold at the Jack in the Box restaurants.

Well, I do not think there is anybody in this chamber or watching who would argue with the fact that the giant corporation that runs this chain should be held responsible, should be held accountable for what happened here.

They should be responsible for their negligence because of what happened to these people and because of the death of these three children. Under current American law, those who have been wronged or have been injured have a right to seek restitution. That is the way the system works. And under the current law they can join together to seek this justice. And in the case of the contaminated hamburgers, they did just that. Unfortunately, under this legislation that we are considering today, these victims would have little recourse.

Under this legislation, they would have had no choice but to choke down this toxic meat. And under this legislation, consumers would find it much, much harder to come together, to join together as a group to fight some of the most powerful, strongest institutions or organizations in this country. That is what class action is all about, organizations that sometimes, unfortunately, abuse their trust, our trust, rip consumers off, or put, in this case of the E. Coli bacteria, put their lives at risk.

The current tort system may have its flaws, Mr. Chairman, but at its core it still offers Americans the best and, in many cases, their only shot at justice. So I want to urge my colleagues to support the amendment offered by the gentlewoman from California and the gentleman from Massachusetts. I want to urge my colleagues to vote ''yes'' on that amendment and to cast a vote for accountability, a vote for justice, a vote for environmental concerns, a vote for economic justice concerns and consumer concerns, and vote ''no'' on this legislation.

Mr. BERMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, among the many benefits of this procedure of clustering votes after the debate on a number of amendments, in addition to the far better use of a Member's time, is the fact that a Member who comes in too late to debate the amendment he wanted to debate, gets a chance to debate that amendment on the next amendment. So I rise in support of the Waters amendment but also in support and speaking on behalf of the Frank amendment.

We have heard a lot about the problems of judicial vacancies in the context of this particular amendment. I think it cannot be disputed that as a result of what this bill seeks to do, with its very open and permissive abilities to remove class-action suits to Federal court, the vast majority of class action suits, which raise State law issues and only State law issues, will end up being heard in the Federal courts. This in a system bogged down with large backlogs; bogged down with a number of judicial vacancies.

I am sure no one could have put it better than the gentleman from Massachusetts (Mr. FRANK), whom I missed in terms of his debate on his amendment, the relative absurdity of the situation where now, with very permissive removal rules, a class-action case involving a State law is removed to a Federal court, and the Federal judge determines that, applying his notions of the law, that that class is not appropriately certified. At that particular point one would normally expect that it could be remanded back to the State level for a determination by the State courts of whether under State law it is appropriate to certify the class. Without the Frank amendment, such an action will then again, with the new lawsuit, be removed back to Federal Court. And we will never get out of this revolving door.

So the amendment of the gentleman from Massachusetts, which makes it clear that once a Federal judge has refused to certify the class, that action may be brought in State court, cannot be removed, and it will be up to the State justice system to decide whether there is an appropriate class to certify makes a little bit of sense out of this otherwise both, I think, damaging and somewhat senseless proposal that, in effect, will deprive huge numbers of people of class action remedies in State courts or in Federal courts on matters that are essentially matters of State law.

I support the Frank amendment; I support the Waters amendment. If those amendments do not pass, I urge this bill be defeated.

Mr. DELAHUNT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let me echo the words expressed by the gentlewoman from Colorado. This is not about blame. This is not about blaming the Senate or blaming the White House. This is really about justice for the American people. I do not think there is any debate that justice delayed is justice denied. And that is happening now. That is happening every day in our court system now.

Now, this amendment provides that the bill would take effect only once the judicial conference of the United States has certified in writing that fewer than 3 percent of the Federal judgeships remain unfulfilled. The purpose of the amendment is to ensure that the depleted ranks of the Federal branch are restored to their full strength before the courts are asked to take on a new massive workload that this bill would generate.

There should be no doubt that 1875 will have a dramatic impact on the workload of the Federal courts, because its very purpose is to transfer to the Federal system a large proportion of the class-action cases that are currently handled at the State level. The Federal courts, if the underlying bill should pass, will be swamped at a moment when they are already overwhelmed by mounting caseloads.

Since 1990, the number of civil cases filed in Federal court have increased by 22 percent, criminal cases by 25 percent, and appeals by more than 30 percent. In response to this judicial crisis, the Judicial Conference has asked Congress to authorize an additional 69 judgeships, yet not one new judgeship has been authorized or created since 1990, for almost 10 years. And of the 843 judgeships that currently exist, 65, more than 8 percent, are currently vacant. Many have remained unfulfilled for more than a year and a half.

Last year, the Chief Justice himself took the unprecedented step of publicly chastising the Senate for its failure to act on pending nominations and warned of the consequences if Congress continues to enact legislation, exactly like the bill that is before us now, that expands the jurisdiction of the Federal courts. His concerns have been echoed by the Justice Department, the American Bar Association, and the Judicial Conference. Let us listen to those who have to deal with the problem every day. Every day.

Just yesterday, a nonpartisan organization known as Citizens for Independent Courts issued a report which found that the average time it takes to nominate and confirm a Federal judge has increased dramatically over the past 20 years. And at the same time, here we are considering a bill that would impose a major new burden on the Judiciary without regard to its impact on that branch of Government, and without giving our courts the resources they need to do the job.

I daresay, Mr. Chairman, if there was an impact statement that was mandated to be filed with this legislation, it would never be here on the floor of the House. It would not happen.

□ 1500

I believe and suggest and submit that this is irresponsible on those grounds alone. I urge support for the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from California (Ms. WATERS).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. DELAHUNT. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to House Resolution 295, further proceedings on the amendment offered by the gentlewoman from California (Ms. WATERS) will be postponed.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN. Pursuant to House Resolution 295, proceedings will now resume on those amendments on which further proceedings were postponed in the following order: Amendment No. 4 offered by the gentleman from New

York (Mr. NADLER), Amendment No. 3 offered by the gentlewoman from Texas (Ms. JACKSON-LEE), Amendment No. 2 offered by the gentleman from Massachusetts (Mr. FRANK), and Amendment No. 6 offered by the gentlewoman from California (Ms. WATERS).

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT NO. 4 OFFERED BY MR. NADLER

The CHAIRMAN. The pending business is the demand for a recorded vote on Amendment No. 4 offered by the gentleman from New York (Mr. NADLER) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 152, noes 277, not voting 4, as follows:

[Roll No. 439]

AYES—152

Abercrombie
Ackerman
Allen
Andrews
Baird
Baldacci
Baldwin
Barrett (WI)
Becerra
Berkley
Berman
Blagojevich
Blumenauer
Bonior
Borski
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson
Clay
Clayton
Clement
Clyburn
Conyers
Coyne
Crowley
Cummings
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dixon
Doggett
Doyle
Engel
Eshoo
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Ganske
Gejdenson
Gephardt
Gonzalez
Green (TX)
Gutierrez
Hall (OH)
Hall (TX)
Hastings (FL)
Hinchey
Hinojosa
Hoeffel
Holt
Hoyer
Inslee
Jackson (IL)
Jackson-Lee (TX)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Klink
Kucinich
Lantos
Larson
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Markey
Martinez
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Minge
Mink
Moakley
Moran (VA)
Nadler
Napolitano
Neal
Oberstar
Olver
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Porter
Price (NC)
Rangel
Reyes
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sanchez
Sanders
Sawyer
Schakowsky
Serrano
Sherman
Slaughter
Smith (WA)
Stabenow
Stark
Stupak
Tauscher
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Velazquez
Vento
Waters
Waxman
Weiner
Wexler
Weygand
Woolsey
Wu
Wynn

NOES—277

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Berry
Biggert
Bilbray
Bilirakis
Bishop
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boucher
Boyd
Brady (TX)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth
Coburn
Collins
Combest
Condit
Cook
Cooksey
Costello
Cox
Cramer
Crane
Cubin
Cunningham
Danner
Davis (FL)
Davis (VA)
Deal
DeLay
DeMint
Diaz-Balart
Dickey
Dingell
Dooley
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Etheridge
Everett
Ewing
Fletcher
Foley
Forbes
Fossella
Fowler
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green (WI)
Greenwood
Gutknecht
Hansen
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (IN)
Hill (MT)
Hilleary
Hilliard
Hobson
Hoekstra
Hooley
Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Isakson
Istook
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones (NC)
Kasich
Kelly
Kind (WI)
King (NY)
Kingston
Kleczka
Knollenberg
Kolbe
Kuykendall
LaFalce
LaHood
Lampson
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Mascara
McCollum
McCrery
McHugh
McInnis
McIntosh
McIntyre
McKeon
Metcalf
Mica
Miller (FL)
Miller, Gary
Mollohan
Moore
Moran (KS)
Morella
Murtha
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Obey
Ortiz
Ose
Oxley
Packard
Pease
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pickett
Pitts
Pombo
Pomeroy
Portman
Pryce (OH)
Quinn
Radanovich
Rahall
Ramstad
Regula
Reynolds
Riley
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Sabo
Salmon
Sandlin
Sanford
Saxton
Schaffer
Scott
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shows
Shuster
Simpson
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Souder
Spence
Spratt
Stearns
Stenholm
Strickland
Stump
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Thurman
Tiahrt
Toomey
Traficant
Turner
Upton
Visclosky
Vitter
Walden
Walsh
Wamp
Watkins
Watt (NC)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson
Wise
Wolf
Young (AK)
Young (FL)

NOT VOTING—4

Coble
Holden
Jefferson
Scarborough

□ 1523

Messrs. UPTON, KNOLLENBERG and GILMAN changed their vote from ''aye'' to ''no.''

Mr. ENGEL, Mrs. JONES of Ohio and Mr. CLYBURN changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. Pursuant to House Resolution 295, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device will be taken on each amendment on which the Chair has postponed further proceedings.

AMENDMENT NO. 3 OFFERED BY MS. JACKSON-LEE OF TEXAS

The CHAIRMAN. The pending business is the demand for a recorded vote on Amendment No. 3 offered by the gentlewoman from Texas (Ms. JACKSON-LEE) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 162, noes 266, not voting 5, as follows:

[Roll No. 440]

AYES—162

Abercrombie
Ackerman
Allen
Andrews
Baird
Baldacci
Baldwin
Barcia
Barrett (WI)
Becerra
Berkley
Berman
Bilbray
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson
Clay
Clement
Conyers
Coyne
Crowley
Cummings
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Engel
Eshoo
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Franks (NJ)
Frost
Ganske
Gejdenson
Gephardt
Gonzalez
Green (TX)
Gutierrez
Hall (OH)
Hall (TX)
Hansen
Hastings (FL)
Hinchey
Hinojosa
Hoeffel
Holt
Hoyer
Inslee
Jackson (IL)
Jackson-Lee (TX)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Klink
Kucinich
Lantos
Larson
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McKinney
McNulty
Meehan

Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Minge
Mink
Moakley
Moran (VA)
Nadler
Napolitano
Neal
Oberstar
Olver
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Pomeroy
Porter
Rangel
Reyes
Rivers
Rodriguez
Roemer
Rothman
Roybal-Allard
Rush
Sanchez
Sanders
Sawyer
Schakowsky
Serrano
Sherman
Shows
Slaughter
Smith (WA)
Stabenow
Stark
Stupak
Tauscher
Taylor (MS)
Tierney
Towns
Traficant
Udall (CO)
Udall (NM)
Velazquez
Vento
Visclosky
Waters
Waxman
Weiner
Wexler
Weygand
Woolsey
Wu
Wynn

NOES—266

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Berry
Biggert
Bilirakis
Bishop
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boucher
Boyd
Brady (TX)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth
Clayton
Clyburn
Coburn
Collins
Combest
Condit
Cook
Cooksey
Costello
Cox
Cramer
Crane
Cubin
Cunningham
Danner
Davis (FL)
Davis (VA)
Deal
DeLay
DeMint
Diaz-Balart
Dickey
Dooley
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Etheridge
Everett
Ewing
Fletcher
Foley
Forbes
Fossella
Fowler
Frelinghuysen
Gallegly
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green (WI)
Greenwood
Gutknecht
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (IN)
Hill (MT)
Hilleary
Hilliard
Hobson
Hoekstra
Hooley
Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Isakson
Istook
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones (NC)
Kasich
Kelly
Kind (WI)
King (NY)
Kingston
Kleczka
Knollenberg
Kolbe
Kuykendall
LaFalce
LaHood
Lampson
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCollum
McCrery
McHugh
McInnis
McIntosh
McIntyre
McKeon
Metcalf
Mica
Miller (FL)
Miller, Gary
Mollohan
Moore
Moran (KS)
Morella
Murtha
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Obey
Ortiz
Ose
Oxley
Packard
Pease
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pickett
Pitts
Pombo
Portman
Price (NC)
Pryce (OH)
Quinn
Radanovich
Rahall
Ramstad
Regula
Reynolds
Riley
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Sabo
Salmon
Sandlin
Sanford
Saxton
Schaffer
Scott
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Souder
Spence
Spratt
Stearns
Stenholm
Strickland
Stump
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauzin
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Toomey
Turner
Upton
Vitter
Walden
Walsh
Wamp
Watkins
Watt (NC)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson
Wise
Wolf
Young (AK)
Young (FL)

NOT VOTING—5

Coble
Holden
Jefferson
Roukema
Scarborough

□ 1531

Mr. LoBIONDO changed his vote from ''aye'' to ''no.''

Mr. ROEMER changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 2 OFFERED BY MR. FRANK OF MASSACHUSETTS

The CHAIRMAN. The pending business is the demand for a recorded vote on Amendment No. 2 offered by the gentleman from Massachusetts (Mr. FRANK) on which further proceedings were postponed and on which the noes prevailed by a voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 202, noes 225, not voting 6, as follows:

[Roll No. 441]

AYES—202

Abercrombie
Ackerman
Allen
Andrews
Baird
Baldacci
Baldwin
Barcia
Barrett (WI)
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Brady (PA)
Brown (FL)
Brown (OH)
Campbell
Capps
Capuano
Cardin
Carson
Clay
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Crowley
Cummings
Danner
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Duncan
Edwards
Ehrlich
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Ganske
Gejdenson
Gephardt
Gonzalez
Gordon
Green (TX)
Greenwood
Gutierrez
Hall (OH)
Hall (TX)
Hastings (FL)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holt
Hooley
Hoyer
Inslee
Isakson
Istook
Jackson (IL)
Jackson-Lee (TX)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind (WI)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Larson
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Minge
Mink
Moakley
Mollohan
Moore
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pease
Pelosi
Phelps
Porter
Price (NC)
Pryce (OH)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Snyder
Spratt
Stabenow
Stark
Strickland
Stupak
Taylor (MS)
Thompson (MS)
Thurman
Tierney
Towns
Traficant
Turner
Udall (CO)
Udall (NM)
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Weiner
Wexler
Weygand
Wise
Woolsey
Wu
Wynn

NOES—225

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Biggert
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boucher
Boyd
Brady (TX)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Cramer
Crane
Cubin
Cunningham
Davis (VA)
Deal
DeLay
DeMint
Dickey
Doolittle
Dreier
Dunn
Ehlers
Emerson
English
Everett
Ewing
Fletcher
Foley
Forbes
Fossella
Fowler
Franks (NJ)
Frelinghuysen
Gallegly
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Goss
Graham
Granger
Green (WI)
Gutknecht
Hansen
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (IN)
Hill (MT)
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones (NC)
Kasich
Kelly
King (NY)
Kingston
Knollenberg
Kolbe
Kuykendall
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Metcalf
Mica
Miller (FL)
Miller, Gary
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Ose
Oxley
Packard
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Portman
Quinn
Radanovich
Ramstad
Regula
Reynolds
Riley
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema

Royce
Ryan (WI)
Ryun (KS)
Salmon
Sanford
Saxton
Schaffer
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauzin
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Tiahrt
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)

NOT VOTING—6

Coble
Holden
Jefferson
Miller, George
Murtha
Scarborough

□ 1538

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 6 OFFERED BY MS. WATERS

The CHAIRMAN. The pending business is the demand for a recorded vote on Amendment No. 6 offered by the gentlewoman from California (Ms. WATERS) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 185, noes 241, not voting 7, as follows:

[Roll No. 442]

AYES—185

Abercrombie
Ackerman
Allen
Andrews
Baird
Baldacci
Baldwin
Barcia
Barrett (WI)
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Carson
Clay
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Crowley
Cummings
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gejdenson
Gephardt
Gonzalez
Green (TX)
Hall (OH)
Hall (TX)
Hastings (FL)
Hill (IN)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holt
Hooley
Hoyer
Inslee
Jackson (IL)
Jackson-Lee (TX)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind (WI)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Larson
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Minge
Mink
Moakley
Moore
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Phelps
Pomeroy
Price (NC)
Rangel
Reyes
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Snyder
Spratt
Stabenow
Stark
Strickland
Stupak
Tauscher
Thompson (MS)
Thurman
Tierney
Towns
Traficant
Turner
Udall (CO)
Udall (NM)
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Weiner
Wexler
Weygand
Wise
Woolsey
Wu
Wynn

NOES—241

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Biggert
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boucher
Boyd
Brady (TX)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Cardin
Castle
Chabot
Chambliss
Chenoweth
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Cramer
Crane
Cubin
Cunningham
Danner
Davis (VA)
Deal
DeLay
DeMint
Diaz-Balart
Dickey
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
English
Everett
Ewing
Fletcher
Foley
Forbes
Fossella
Fowler
Franks (NJ)
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green (WI)
Greenwood
Gutknecht
Hansen
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (MT)
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Isakson
Istook
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones (NC)
Kasich
Kelly
King (NY)
Kingston
Knollenberg
Kolbe
Kuykendall
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Metcalf
Mica
Miller (FL)
Miller, Gary
Mollohan
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Ose
Oxley
Packard
Paul
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Rahall
Ramstad
Regula
Reynolds
Riley
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Salmon
Sanford
Saxton
Schaffer
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Tiahrt
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)

NOT VOTING—7

Coble
Emerson
Gutierrez
Holden
Jefferson
Radanovich
Scarborough

□ 1546

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there other amendments?

If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Accordingly, under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. LAHOOD) having assumed the chair, Mr. HANSEN, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1875) to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, pursuant to House Resolution 295, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 222, noes 207, not voting 4, as follows:

[Roll No. 443]

AYES—222

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Biggert
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boucher
Boyd
Brady (TX)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cannon
Castle
Chabot
Chambliss
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Cramer
Crane
Cubin
Cunningham
Danner
Davis (VA)
Deal
DeLay
DeMint
Dickey
Dooley
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
Everett
Ewing
Fletcher
Fossella
Fowler
Franks (NJ)
Frelinghuysen
Gallegly
Gekas
Gibbons
Gilchrest
Gillmor
Goode
Goodlatte
Goodling
Gordon
Goss
Granger
Green (WI)
Gutknecht
Hall (TX)
Hansen
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (MT)
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Isakson
Istook
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones (NC)
Kasich
Kelly
Kingston
Knollenberg
Kolbe
Kuykendall
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Metcalf
Mica
Miller (FL)
Miller, Gary
Moran (KS)
Moran (VA)
Myrick
Ney
Northup
Norwood
Nussle
Ose
Oxley
Packard
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Regula
Reynolds
Riley
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Salmon
Sanford
Saxton
Schaffer
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)

NOES—207

Abercrombie
Ackerman
Allen
Andrews
Baird
Baldacci
Baldwin
Barrett (WI)
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Brady (PA)
Brown (FL)
Brown (OH)
Campbell
Capps
Capuano
Cardin
Carson
Chenoweth
Clay
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Crowley
Cummings
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Doolittle
Doyle
Edwards
Engel
English
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Foley
Forbes
Ford
Frank (MA)
Frost
Ganske
Gejdenson
Gephardt
Gilman
Gonzalez
Graham
Green (TX)
Greenwood
Gutierrez
Hall (OH)
Hastings (FL)
Hill (IN)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holt
Hooley
Hoyer
Inslee
Jackson (IL)
Jackson-Lee (TX)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Larson
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Minge
Mink
Moakley
Mollohan
Moore
Morella
Murtha
Nadler
Napolitano
Neal
Nethercutt
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Phelps
Pickett
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Snyder
Spratt
Stabenow
Stark
Strickland
Stupak
Tauscher
Terry
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Traficant
Turner
Udall (CO)
Udall (NM)
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Weiner
Wexler
Weygand
Wise
Woolsey
Wu
Wynn

NOT VOTING—4

Coble
Holden
Jefferson
Scarborough

□ 1604

Mr. TAYLOR of North Carolina changed his vote from ''no'' to ''aye.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

ANNOUNCEMENT OF INTENTION TO OFFER MOTION TO INSTRUCT CONFEREES ON H.R. 1501, JUVENILE JUSTICE REFORM ACT OF 1999

Mr. DOOLITTLE. Mr. Speaker, pursuant to clause 7(c) of rule XXII, I hereby announce my intention to offer a motion to instruct conferees on H.R. 1501 tomorrow.

The form of the motion is as follows:

Mr. DOOLITTLE moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendments to the bill H.R. 1501 to be instructed to insist that the conference report not include Senate provisions that—

(1) do not recognize that the second amendment to the Constitution protect the individual right of American citizens to keep and bear arms; and

(2) impose unconstitutional restrictions on the second amendment rights of individuals.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Sherman Williams, one of his secretaries.

MOTION TO INSTRUCT CONFEREES ON H.R. 1501, JUVENILE JUSTICE REFORM ACT OF 1999

Mrs. MCCARTHY of New York. Mr. Speaker, I rise to offer a privileged motion to instruct conferees on the bill (H.R. 1501) to amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide grants to ensure increased accountability for juvenile offenders; to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to provide quality prevention programs and accountability programs relating to juvenile delinquency; and for other purposes.

The SPEAKER pro tempore (Mr. LAHOOD). The Clerk will report the motion.

The Clerk read as follows:

Mrs. MCCARTHY of New York moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill, H.R. 1501, be instructed to insist that—

(1) the committee of conference should this week have its first substantive meeting to offer amendments and motions, including gun safety amendments and motions; and

(2) the committee of conference should meet every weekday in public session until the committee of conference agrees to recommend a substitute.

The SPEAKER pro tempore. Pursuant to clause 7, rule XXII, the gentlewoman from New York (Mrs. MCCARTHY) and the gentleman from Illinois (Mr. HYDE) each will control 30 minutes.

The Chair recognizes the gentlewoman from New York (Mrs. MCCARTHY).

Mrs. MCCARTHY of New York. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today I offer a motion to instruct the conferees on H.R. 1501 to meet publicly, beginning this week, and every weekday until we reach a conference agreement.

Stated more simply, my colleagues and I are asking that we move forward with the conference on the juvenile justice bill. The motion is not offered as a criticism. I understand that the chairman and the ranking member of the Committee on the Judiciary have met in an attempt several times to reach a compromise on the gun provisions in the juvenile justice bill.